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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 470

DANIEL F. RICE, JOSEPH J. RICE, ET AL., ETC.,
PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

No. 472

ILLINOIS COMMERCE COMMISSION, ET AL.,
PETITIONERS,

vs.

GREAT LAKES ELEVATOR CORPORATION, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITIONS FOR CERTIORARI FILED SEPTEMBER 6, 1946.

CERTIORARI GRANTED OCTOBER 21, 1946.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Placita omitted]

[fol. 2] No. 44-C-1257

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

GREAT LAKES ELEVATOR CORPORATION, SANTA FE ELEVATOR CORPORATION, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., Plaintiffs,

vs.

ILLINOIS COMMERCE COMMISSION and Its Chairman, JOHN D. BIGGS, and William Farrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, and Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., a partnership, and George F. Barrett, Attorney General of Illiois, Defendants

COMPLAINT—Filed October 20, 1944

[fol. 3] To the Honorable Judges of the United States District Court for the Northern District of Illinois, Eastern Division:

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., bring this action against the Illinois Commerce Commission and John D. Biggs, its Chairman, and against William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, (hereinafter sometimes referred to collectively as the Commission), and Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co. and George F. Barrett, Attorney General of Illinois (all of the foregoing, except the Plaintiffs, being hereinafter sometimes referred to collectively as Defendants) for the purpose of enjoining the defendants composing said partnership of Daniel F. Rice & Co. from further prosecuting

the proceedings before the said Commission entitled Daniel F. Rice & Co. *vs.* Chicago Grain Corporation, et al., Docket 32267, and of enjoining the Commission from entertaining further jurisdiction of said matter, and of enjoining George F. Barrett, Attorney General of the State of Illinois, from instituting any proceedings against the plaintiffs, or any of them, to enforce any order of the Commission in said proceedings, and from prosecuting these plaintiffs, or any of them, under any law of Illinois relating to public grain warehousemen.

I

The jurisdiction of this Court over this action is invoked under Section 24, subdivision 1, of the Judicial Code of the United States, as amended, (Section 41 (1) of Title 28 of U. S. C. as amended). The matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00 and arises under the constitution and laws of the United States, and particularly under:

[fol. 4] (a) Article I, Section 8, Clause 3, of the Constitution of the United States;

(b) United States Warehouse Act (7 U. S. C., Section 241, *et seq.*);

(c) Commodity Exchange Administration Act (7 U. S. C. Section 1 *et seq.*), and

(d) Official regulations duly promulgated under said two designated acts.

The value of the right of plaintiff, derived from the Federal law, to conduct their business free from regulation and interference by the Commission and to store their own grain in public warehouses operated by them and the cost of defending the proceedings before said Commission, generally described in the introductory paragraph hereof, would in the instance of each plaintiff, exceed the sum or value of $3,000.00 exclusive of interest and costs.

II

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, and Rosenbaum Bros. are all Illinois corporations, and Stratton Grain Company, Continental Grain Company, and Cargill, Inc. are Dela-

ware corporations. Each of said corporations is duly licensed to do business in the State of Illinois, and each has a place of business in the City of Chicago, County of Cook, and State of Illinois, within this District and Division.

III

Each of said plaintiffs is engaged in the business of the public storage of grain for hire for interstate commerce within this District and Division, under a license duly issued by the Secretary of Agriculture of the United States, pursuant to an Act of the Congress of the United States commonly known as the United States Warehouse Act (7 U. S. C., Section 241, *et seq.*) and under a schedule of rates, charges, and practices duly filed with said Secretary of Agriculture, as required by law. As the holder of such license, each of said Plaintiffs is subject to said United States Warehouse Act and the rules and regulations duly promulgated thereunder.

Each of said plaintiffs, except Great Lakes Elevator Corporation, deals in grain, both on its own account and as [fol. 5] agent for others. The approximate dates upon which each of said Plaintiffs secured its grain warehouseman's license from the Secretary of Agriculture, and initially filed its schedule of rates, charges, and practices with the Secretary of Agriculture, are set forth below:

Warehouse Co.	Date
Great Lakes Elevator Corporation	September 28, 1942
Santa Fe Elevator Corporation	August 1, 1939
Norris Grain Company	January 24, 1939
Stratton Grain Company	September 16, 1940
Continental Grain Company	February 28, 1938
Rosenbaum Bros.	July 1, 1937
Cargill, Inc.	July 1, 1937

IV

Defendant, Illinois Commerce Commission, is an administrative body existing under and by virtue of an act of the State of Illinois entitled "An Act Concerning Public Utilities Approved June 29, 1921, as amended" (Illinois Revised Statutes 1943, Chapter 111⅔, Section 1, et seq.), and is specifically charged with the administration and enforcement of said act in the regulation of certain public

utilities therein defined, including public grain warehouses, in some of their operations within the State of Illinois. Said Commission has one office in the City of Springfield, County of Sangamon, and State of Illinois, in the Southern District of this State, and another in the City of Chicago, County of Cook, in said State, in this District and Division. All the said members of said Commission are citizens and residents of the State of Illinois, and three members thereof, William Parillo, Frank Peska and Val. J. Washington are citizens and residents of this District and Division.

Defendant George F. Barrett is the duly elected and acting Attorney General of the State of Illinois and the legal adviser to all State Officers Boards & Commissions including Illinois Commerce Commission.

Defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., are dealers in grain, with their residences and principal place of business in the City of Chicago, County of Cook, and State of Illinois, within this District and Division.

[fol. 6] V

The grain market at Chicago, Illinois, is, and for many years last past has been, the world's largest market. For the year ended December 31, 1943 approximately 2,000,000,000 bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trading in grain futures contracts in the United States is done at the said market on the said Board of Trade, a corporation which has been designated a contract market by the Secretary of Agriculture under the Commodity Exchange Act. Under that Act futures contracts on said Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the United States Warehouse Act. The warehouse receipts issued by plaintiffs are issued under, and comply in all respects with, the United States Warehouse Act and are in general use upon the said Board of Trade in the satisfaction of futures

contracts on that interstate market and as such are instruments of interstate commerce.

VI

On or about July 28, 1944, defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley caused to be filed before the Commission their complaint against the Plaintiffs, and other-, charging numerous violations of the Illinois Public Utility Act in so far as it was alleged to apply to warehousemen engaged in the State of Illinois in the public storage of grain for hire. A copy of said complaint is annexed hereto as Exhibit "a" and, by this reference, made a part of this complaint. In and by Paragraph 13 of said complaint it is charged that all or some of the warehousemen defendants named in the said complaint have violated the laws of the State of Illinois in the particulars therein specified.

[fol. 7]

VII

On or about August 30, 1944, plaintiffs filed with the Commission, their joint motion to dismiss (a) said complaint in its entirety; or (b) in the alternative, each of the separate charging paragraphs of the complaint, upon the grounds that the subject matter of said complaint is beyond the jurisdiction of the Commission, and is exclusively within the jurisdiction of the Government of the United States by reason of Paragraph 3, Section 8 of Article I of the Constitution of the United States, and of the Act of Congress, commonly known as the United States Warehouse Act (7 U. S. C. Section 241, *et seq.*), and the Act of Congress commonly known as the Commodity Exchange Administration Act (7 U. S. C. Section 1, *et. seq.*), and of the Official Regulations duly promulgated thereunder. A copy of said motion is annexed hereto as Exhibit "b" and, by this reference, made a part of this complaint.

Briefs were submitted in support of said motion and oral argument had before the Commission on September 26 and 27, 1944.

VIII

Thereafter, on October 10, 1944, the Commission entered its order denying all motions of plaintiffs to dismiss and set the cause for hearing before it on October 24, 1944.

A copy of said order is annexed hereto as Exhibit "C" and, by this reference, made a part of this complaint.

IX

The said Commission, in overruling plaintiffs' motion to dismiss the complaint, Exhibit "A" hereto annexed and by setting said complaint for hearing before it, has illegally usurped jurisdiction to regulate public grain warehouses operated by the plaintiffs herein, which hold licenses issued by the government of the United States, and which by the statutes of the United States and the rules and regulations duly promulgated thereunder are subject solely to regulation by the Government of the United States and not, to any extent, by the State of Illinois, or by any agency of said State, in the particulars sought to be encompassed by, and complained of, in the complaint before [fol. 8] said Commission annexed hereto as Exhibit "A".

The government of the United States has preempted and occupied the field of regulation over public grain warehouses operating under licenses issued by it, to the exclusion of any similar regulation by the State of Illinois respecting such grain warehouses.

The attempted regulation of public grain warehouses by the said Commission is beyond the jurisdiction of the State of Illinois and of the Illinois Commerce Commission, or of any other agency of said State for the reasons assigned in Article VII of said complaint.

X

Under the Constitution of the State of Illinois, as construed by the Supreme Court of that State, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him, whereas under the United States Warehouse Act, and the regulations thereunder, such transactions are entirely legal. Each of the plaintiffs, except Great Lakes Elevator Corporation, does business as an owner and merchandiser of grain and regularly stores, for interstate commerce, grain owned by it as well as that of others in its warehouse or warehouses. The right to store its own grain in a publicly operated warehouse, as permitted by the United States Warehouse Act and regulations thereunder, is property of great value to each of said plaintiffs in its general business opera-

tions; the assumption of jurisdiction by the Commission, under the complaint annexed hereto as Exhibit "A", threatens to destroy that right. The value of the right to conduct their business free from the interference by the Commission and the value of said right to store their own grain in their own warehouses, is difficult, if not impossible, of determintion, and the deprivation of such right would cause said plaintiffs irreparable injury and damage.

XI

Plaintiffs, in the conduct of their general business, except Great Lakes Elevator Corporation, issued to themselves negotiable warehouse receipts for grain in form prescribed by the United States Warehouse Act, and approved [fol. 9] by the Secretary of Agriculture, representing such portion of the grain in their own public warehouses as may be owned by them, and use such receipts not only for the purpose of tranferring title to such grain in sales to others, but also as collateral for commercial loans made from banks, and that in the aggregate the value of such negotiable warehouse receipts so used by plaintiffs is many million dollars per year. Vendees from plaintiffs of such negotiable warehouse receipts in turn use such receipts for the transfer of title to the grain represented thereby and also for collateral to bank loans. Many of such warehouse receipts are presently outstanding and on information and belief, plaintiffs state that such receipts are pledged as collateral for loans aggregating many millions of dollars. If the Commission is permitted to take jurisdiction over the complaint, annexed hereto as Exhibit "A", and conduct hearings thereon, or issue an order pursuant thereto, it will unquestionably, under the decisions of the Supreme Court of Illinois, order the plaintiffs to cease storing grain owned by them in public warehouses operated by them, and that such action by the Commission would throw a cloud upon the validity and negotiability of outstanding warehouse receipts issued by a plaintiff warehouseman representing grain owned by him and stored in his own warehouse and destroy and seriously impair their use and value in commercial transactions. The mere fact that the Commission shall enter into the hearing set on October 24, 1944, would have the immediate effect of creating such a cloud upon such warehouse receipts out-

standing presently and in the future. Plaintiffs further state that the damage in dollars to which the plaintiffs and the grain trading public would be subjected, as a result of the said resulting cloud upon the said warehouse receipts, is not susceptible of accurate determination and is irreparable.

XII

Under the Act commonly known as Illinois Public Warehouse Act approved April 15, 1871 (Ill. Rev. Stat. 1943, Chap. 114, Sec. 191) it is provided that any person who shall transact the business of a public warehouse of Class A or of Class B without procuring a license as therein provided, or who shall violate or participate in the viola-
[fol. 10] tion in any of the provisions of the said Act as amended, for which no other penalty is provided shall be deemed guilty of a misdemeanor and shall, upon conviction, be fined not exceeding $5000.00, or be imprisoned for not exceeding six months for each offense. Under the Illinois Commerce Commission Act of the State of Illinois under which the Illinois Commerce Commission acts (Ill. Rev. State. Chapter 111⅔, Sec. 1, et. seq.), it is provided that any public utility or any corporation other than a public utility which violates or fails to comply with any provisions of that Act or which fails to obey, observe or comply with any order, decision, rule, regulation, direction or requirement of any part or provision thereof, of the Commission, made or issued under authority of that Act, in a case in which a penalty is not otherwise provided for in that Act, shall, upon conviction, be punished by a fine of not less than $500.00 nor more than $2000.00 for each and every offense. By said last named Act it is also provided that every violation of the provisions of that Act or of any order, decision, rule, regulation, direction or requirement of the Commission, or any part or portion thereof, by any corporation or person, is a separate and distinct offense and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

By its order entered herein on October 10, 1944 overruling the motions to dismiss the complaint annexed hereto as Exhibit "A" and setting the said complaint for hearing the Commission has decided that plaintiffs are subject to the laws of the State of Illinois as public grain warehousemen in order to compel the plaintiffs holding grain ware-

house licenses issued by the federal government to comply with the Illinois law respecting public grain warehouses or suffer the penalties fixed by Illinois law for not complying with the Illinois provisions. Plaintiffs further state that the complaint annexed hereto as Exhibit "A" prays that after hearings, the Commission shall assess penalties for such violations of the Illinois State Constitution and Illinois statutes as have occurred on the part of the plaintiffs, including the cancellation of grain warehouse licenses.

[fol. 11] XIII

By the law of the State of Illinois, it is the duty of the Attorney General of the State not only to represent the Commission in all appeals from its orders, but also to institute and prosecute all sections and proceedings in favor of or for the use of the State of Illinois which may be necessary in the execution of the duties of any State officer, including the Commission. That said George F. Barrett, Attorney General of the State of Illinois, as these plaintiffs are informed and believe and state the fact to be, threatens to enforce against these plaintiffs all the terms and provisions of the Illinois Statutes relating to public grain warehouses against these plaintiffs respectively. The plaintiffs further allege that, unless restrained by this Honorable Court the said defendant Attorney General intends to, and will, enforce against these plaintiffs and each of them and their respective officers, agents, servants and employees, the various pains, penalties and forfeitures provided for under the Illinois law respecting public grain warehousemen and intends to and will commence and prosecute the various prosecutions, proceedings and suits purported to be authorized or required under the laws of the State of Illinois respecting public grain warehousemen, and that such action on the part of such defendant will necessarily and unavoidably involve the plaintiffs and their respective officers, agents servants and employees in a multiplicity of legal proceedings and involve and threaten them with the waste and dissipation of their employees, or coerce them into quitting the employ of the plaintiffs in order to avoid prosecution and punishment and their imprisonment under color of legal proceedings, and will foreclose and prohibit the transaction of the business of these plaintiffs, the seizure of their property, books and records, the loss of

their customers and the destruction of their good will and property, all to the irreparable damage of the respective plaintiffs, and that all and singular the damages resulting for such acts and proceedings would be incapable of admeasurement and adjudication at law.

[fol. 12]

XIV

Plaintiffs further state that the said order of the Commission dated October 10, 1944 is invalid on its face, because of the attempt demonstrated thereby to regulate in a field which has been preempted and occupied by the federal government and that any proceedings pursuant to that order of the Commission would be futile and that the expenditures which each plaintiff would be required to make in the defense of any proceedings under said order of the Commission would be many thousand dollars. Plaintiffs further state that the hearing before the Commission would be protracted in that if conducted under the allegations of the complaint annexed hereto as Exhibit "A", it would involve multiple plaintiffs and numerous issues, particularly those relating to the requested fixation of storage rates for the future. Plaintiffs state that hearings involving public utility rate making are extremely technical and expensive, necessitating the services of engineers, appraisers, accountants and attorneys to ascertain and establish, through research, survey and examination those traditional elements of rate making which always enter into such rate cases; namely, the original cost of the warehouse property, its reproduction cost new and its reproduction cost less depreciation. Plaintiffs further state that such expenditures would entail an irreparable damage to each of the plaintiffs in that no redress is legally available to any of the plaintiffs for the recoupment of any of the expenses to which it would be subjected in the defense of the illegal proceeding threatened to be taken by the Commission in the order of hearing specified in the introductory paragraph thereof.

XV

Plaintiffs state that they have no adequate remedy at law in the premises.

Wherefore, Plaintiffs Pray:

First: That process may issue against the Illinois Commerce Commission and its Chairman John D. Biggs, and

its members, William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, and that due and proper service of such process and of this complaint, be forthwith [fol. 13] made by filing a copy thereof in the offices of the Illinois Commerce Commission in the Office of the Secretary of said Commission at the State Capitol Building in Springfield, Illinois, and at his office at Chicago, Illinois, 19th Floor, 160 North LaSalle Street, and an additional copy upon each of the other defendants herein, wherever he may be found in the State of Illinois.

Second: That pending final hearing herein, and in the meantime, a restraining order and preliminary injunction issue enjoining the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., from further prosecuting the said proceedings under the complaint annexed hereto as Exhibit "A" and enjoining said Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, from proceeding with hearings thereunder on October 24, 1944, or at any other time prior to the final order and determination of this cause, or entering any order in said proceedings, and enjoining defendant George F. Barrett, Attorney General of the State of Illinois, from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for any of the alleged violations of the laws of the State of Illinois in the complaint annexed hereto as Exhibit "A".

Third: That, upon final hearing and determination of this cause, this court order, adjudge and decree that the action of the Illinois Commerce Commission, by said order of October 10, 1944, setting for hearing the complaint annexed hereto as Exhibit "A" be declared to be wholly null and void, and further adjudge and decree that the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., be perpetually enjoined from further prosecuting the said proceedings under the said complaint and that the said Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, be per-

petually enjoined from proceeding further with hearings under said complaint, and that defendant George F. Barrett, Attorney General of the State of Illinois, be perpetu-
[fol. 14] ally enjoined from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for any of the alleged violations of the laws of the State of Illinois in the complaint annexed hereto as Exhibit "A".

Fourth: That this court grant to Plaintiffs, and each of them such other and further relief as may be warranted in the premises.

Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, and Stratton Grain Company, by Ferre C. Watkins, 135 South LaSalle Street, Chicago, Illinois, Their Attorney.

Ferre C. Watkins, Tel. Franklin 2900.

Continental Grain Company, by A. L. Rittenberg, 11 South LaSalle Street, Chicago, Illinois, Its Attorney.

Poppenhusen, Johnston, Thompson & Raymond, Tel. Randolph 0220.

Rosenbaum Bros., and Cargill, Inc., Leo F. Tierney, Frank W. Sullivan, by Mayer, Meyer, Austrian & Platt, 231 South LaSalle Street, Chicago, Illinois, Their Attorneys.

Mayer, Meyer, Austrian & Platt, Tel. State 0600.

[fol. 15] *Duly sworn to by D. H. Lipsey. Jurat omitted in printing.*

[fol. 16] EXHIBIT "A"

STATE OF ILLINOIS

Illinois Commerce Commission

No. 32267

DANIEL F. RICE & COMPANY, a partnership, grain dealer, on behalf of his customers and public grain producers, dealers and processors, similarly situated, Plaintiff,

vs.

THE CHICAGO GRAIN CORP., NORRIS GRAIN ELEVATOR CO., General Mills, Inc.-Star Grain Division, Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Cargill, Inc., Continental Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., Stratton Grain Co., and Board of Trade of the City of Chicago, Defendants

In the matter of unjust, unreasonable and discriminatory rates and charges, the maintenance of discriminatory practices, and the violation of law by public grain warehouses.

COMPLAINT—Filed July 28, 1944

Daniel F. Rice & Company, plaintiff, appearing on behalf of its customers and grain producers, dealers and processors similarly situated, by Irvin Rooks and Lee A. Freeman, its attorneys, complains of the defendants as follows:

1. Daniel F. Rice & Company, an Illinois partnership, is an owner, shipper and dealer in grain in the state of Illinois, is a member of the Chicago Board of Trade and other grain exchanges, and is and for some years past has been a consumer of the defendant warehousemen named herein.

2. Daniel F. Rice & Company purchases, sells and deals in grain on the Chicago Board of Trade for and on behalf [fol. 17] of grain producers, grain dealers and grain processors, who thereby are and have been consumers of the defendant warehousemen named herein. This complaint is brought not only on behalf of Daniel F. Rice & Company and his customers, but as representative of, and for the use and benefit of all public grain producers, dealers and

processors, who have stored grain in the public grain elevators maintained by defendant warehousemen, or who have paid grain storage and warehousing charges, and who therefore have rights in common with the plaintiff herein.

3. Defendants, Chicago Grain Corp., Norris Grain Elevator Co., Rosenbaum Bros., Santa Fe Elevator Corp., Norris Grain Co., Great Lakes Elevator Corp., Cargill Illinois Grain Co., all Illinois Corporations, and Cargill, Inc., General Mills, Inc.-Star Grain Division, Continental Grain Co., Stratton Grain Co., all foreign corporations, (hereinafter referred to as "warehousemen") own or control, and operate property and facilities within the state of Illinois, which are used in the public storage and warehousing of grain for hire and compensation, and as such are all public utilities as defined in Section 10 of an act of the State of Illinois entitled "An Act concerning public utilities", approved June 29, 1921, as amended (hereinafter "Public Utility Act") which reads in part:

"The term 'public utility', when used in this Act means and includes every corporation * * * their lessees, trustees, or receivers * * * that now or hereafter:

"(a) May own, control, operate or manage, within the State, directly or indirectly for public use, any plant, equipment or property used or to be used for or in connection with * * * the storage or warehousing of grain; * * * or that

"(b) May own or control any franchise, license, permit or right to engage in any such business.

* * * * * * *

"The term 'warehouse' when used in this Act, includes all elevators or storehouses where grain is stored for a compensation, whether the property stored be kept separate or not."

4. The defendant Board of Trade of the City of Chicago (hereinafter "Chicago Board of Trade") is a board of trade and grain exchange, organized under a Special Act of the Illinois Legislature, approved February 18, 1859.

[fol. 18] 5. The defendant warehousemen own or control, and operate grain elevator capacity for public storage and

warehousing of grain. In addition, they own and deal in grain, and usually store such grain in portions of their own elevators designated as private storage capacity. They have been issued and possess either state or federal grain warehouse licenses. The warehousemen involved, the grain elevators owned or controlled, and operated, and the type of license possessed are as follows:

Warehouseman	Grain Elevator	License Possessed
Chicago Grain Corp.	Irondale A	State
Norris Grain Elev. Co.	Norris	State
Norris Grain Co.	Wabash	Federal
Norris Grain Co.	Elevator J*	Federal
General Mills, Inc. Star Grain Division	Rialto	Federal
Rosenbaum Bros.	Calumet	Federal
Rosenbaum Bros.	N. Y. Central*	Federal
Santa Fe Elevator Corp.	Santa Fe	Federal
Cargill Ill. Grain Co.) Cargill, Inc.)	Chicago & N. W. Terminal & Annex	Federal
Continental Grain Co.	Rock Island Terminal C	Federal
Continental Grain Co.	Rock Island Terminal D	Federal
Great Lakes Elevator Corp.	National	Federal
Stratton Grain Co.	Dickinson*	Federal

* Not regular for delivery on Board of Trade contracts.

The total available grain elevator and warehouse capacity in the Chicago terminal market is approximately 40,000,000 bushels out of which approximately 27,000,000 bushels of capacity has been designated for public storage. The remaining capacity is designated as private storage capacity although such private capacity may be used from time to time for public storage of grain.

6. The grain storage rates established by each and all of said warehousemen are:

For public storage of grain.

On all grain, soybeans and flax seed received in bulk and inspected in good condition.

Unloading and loading out charges.

[fol. 19] 1¼¢ per bushel for receiving and shipping and for first ten day's storage or part thereof.

Storage charges.

1/25 of 1¢ per bushel per day for each additional day storage (after first ten) so long as said grain, soybeans and flax seed remain in good condition.

Conditioning, insurance and other services.

No rates established.

For storage of grain owned by or under control of the United States of America or an agency thereof:

Unloading and loading out charges.

For barley, wheat, rye and corn received by rail or water, ½¢ per bushel for unloading, ½¢ per bushel for loading out.

Storage charges.

For barley, wheat and rye received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges, and no charge for the remainder of the period.

For corn received by rail or water, 1/30 of 1¢ per bushel per day for the first 210 days of the annual period for computing charges and no charge for the remainder of the period.

Conditioning, insurance and all other charges.

For barley, wheat and rye, ⅜ of 1¢ per bushel per month or fraction thereof, for the first six storage months of the annual period for computing charges.

For corn, ⅜ of 1¢ per bushel per month, or fraction thereof, for first three storage months, of the period used for computing charges.

7. Each and all of said warehousemen have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Section 32 of the Public Utility Act, in that the grain storage rates charged public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff, are grossly excessive and exorbitant. Such rates have resulted in excess earnings, profits and return to the defendant warehousemen and have far exceeded the reasonable value and worth of the service rendered.

8. Each and all of said warehousemen have been and are guilty of discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and against your plaintiff, and have been and are granting [Vol. 20] unwarranted preferences and advantages to the federal government and agencies thereof, as an owner, dealer and storer of grain, contrary to Section 38 of the Public Utility Act and Section 15 of "An Act to regulate public warehouses, etc.", approved April 25, 1871, as amended (hereinafter "Illinois Grain Warehouse Act") by storing and warehousing grain for public grain producers, owners, shippers, dealers, receivers and processors, and charged your plaintiff, at a grossly unwarranted and unreasonable difference in grain storage rates than are charged the federal government and agencies thereof.

9. All or some of said warehousemen, by reason of their dual and conflicting positions as public grain warehousemen and dealers in grain, have received undue preferences and advantages of such dealers, to the detriment and in discrimination against public grain producers, owners, shippers, dealers, receivers and processors, and your plaintiff, as customers of such warehousemen, all in violation of Sections 32, 38 and 41 of the Public Utility Act, and of Sections 6, 11, 15 and 17 of the Illinois Grain Warehouse Act, by:

(a) Mixing high quality public grain with inferior grain owned or acquired by the defendant warehouseman to reduce grain delivered to the point of minimum quality within the established grain trade.

(b) Sacrificing part of storage charges to offset purchases and sales of grain and otherwise manipulating and rebating storage charges on grain stored in private warehouse space.

(c) Furnishing transit tonnage to owners of public grain of the most undesirable type, while withholding for their own use the most desirable transit tonnage, thereby placing the owners of public grain at a distinct disadvantage in merchandising grain in storage.

(d) Providing for storage of public grain in old wooden warehouses carrying exorbitant insurance premium rates, while storing the warehouseman's own grain in modern warehouses with reasonable insurance premium rates.

(e) Unduly and imprudently delaying loading of grain after return of warehouse receipt issued by the particular warehouseman, the tender of proper charges and the receipt of instructions to load grain for delivery.

10. The existing practice of all or some of said warehousemen in occupying a dual and conflicting position as [fol. 21] public grain warehouseman and at the same time dealing in grain, and of storing or mixing in his public warehouse grain in which he has an interest, direct or indirect, is unlawful and contrary to the public policy of the state as expressed in Article XIII of the Illinois Constitution of 1870. Such public warehousemen are prohibited under the constitution from holding an interest inconsistent with and adverse to those whom they are required to serve. Such practices have been enjoined and declared illegal by the Supreme Court of Illinois in *Central Elevator Co.* v. *People*, 174 Ill. 203 (1898); *Hannah v. People*, 198 Ill. 77 (1902); and the vice thereof recognized by this commission in *Re Board of Trade Whse. Corp.*, Ill C. C. Docket No. 17662, P. U. R. 1928E, 65.

11. The following grain elevators and warehouses owned or controlled, and operated by the warehousemen indicated are unreasonable, unsafe, improper, inadequate and inefficient in that said elevators consist of old wooden structures which may be readily destroyed by fire, and as a consequence require exorbitant and prohibitive insurance premium rates:

Elevator	Owner
Wabash	Norris Grain Company
Rock Island Terminal	
C & D	Continental Grain Company
National	Great Lakes Elevator Corp.

12. All or some of the warehousemen, contrary to their duty as public warehousemen to render adequate, proper and efficient warehousing service, have failed to adequately, properly and efficiently store and handle public grain, and as a consequence the character and quality of the grain so inadequately, improperly and inefficiently stored and handled, has deteriorated to the damage of public grain producers, owners, shippers, dealers, receivers, processors, and your plaintiff.

13. All or some of the warehousemen have violated the laws of the state of Illinois by:

(a) Failing to secure prior approval of the Illinois Commerce Commission before entering into management, construction, engineering, supply, financial and similar contracts and arrangements between such warehousemen as public utilities and an affiliate, as required by Section 8(a) of the Public Utility Act.

[fol. 22] (b) Failing to secure prior approval of contracts, leases, etc., between such warehousemen and other public utilities, as required by Section 27 of the Public Utility Act.

(c) Failing to secure authorization of the commission before issuing securities payable at periods of more than twelve months after date, as required by Section 21 of the Public Utility Act.

(d) Failing to file, print and publish all schedules of rates and charges, as required by Section 33 of the Public Utility Act.

(e) Rendering storage and warehousing services without having filed and published the rates, charges, rules and regulations governing such services, in violation of the prohibitions contained in Section 35 of the Public Utility Act.

(f) Abandoning and discontinuing public grain warehousing service and capacity without first securing the approval of the commission, in violation of Section 49(a) of the Public Utility Act.

(g) Charging unjust, unreasonable and discriminatory rates and pursuing discriminatory practices, in violation of Section 32, 38 and 41 of the Public Utility Act and Section 15 of the Illinois Grain Warehouse Act.

(h) Operating without a state license, in violation of Section 3 of the Illinois Grain Warehouse Act.

(i) Mixing public grain with grains of different grades, in violation of Sections 6 and 17 of the Illinois Grain Warehouse Act.

14. In consequence of the unreasonable and excessive rates and charges maintained by said warehousemen, the discriminatory rates maintained and discriminatory practices perpetrated, the inadequate, improper, unsafe and in-

efficient service rendered, and the violations of the state constitution and state statutes:

The required equality between public warehouse operators and public dealers, receivers and processors of grain is destroyed;
free competition in the purchase and sale of grain is seriously diminished;
arbitrary and unnatural grain prices and fluctuations in the price of grain have resulted;
dealings in futures on the Chicago Board of Trade are uncertain and unattractive;
the free distribution and marketing of grain is impeded, [fol. 23] with particularly serious effect upon the grain export market and trade; and
the status and importance of the Chicago Board of Trade has declined.

15. The Chicago Board of Trade has formulated and adopted Rules and Regulations governing its maintenance as a commercial grain exchange. These rules and regulations should be such as to promote the principles of justice and equity in the purchase, sale and delivery of grain in the Chicago terminal market. In fact, however, the Rules and Regulations adopted by the Chicago Board of Trade are uncertain, incomplete and ambiguous in their coverage, favor warehousemen and the sellers of grain, and discriminate against grain buyers, and in many other respects are unreasonable and unsatisfactory.

16. The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain and Warehouse Act.

Wherefore, complainant Daniel F. Rice & Company, for and on behalf of his customers and public grain producers, dealers and processors similarly situated, prays that this Honorable Commission:

(a) Serve copies of this complaint upon all of the defendants named herein.

(b) Require said defendants to answer this complaint or otherwise plead thereto, within ten days after service thereof.

(c) Set the cause for immediate hearings.

(d) Institute an inquiry and investigation [illegible] unjust, unreasonable and discriminatory rates and practices, the inadequate, improper and unsafe services rendered, and the innumerable violations of law, as specified above.

(e) Order the defendants herein to make available to the Commission and the plaintiff, all of the books, records and files relating to grain storage rates, charges and practices specified above.

(f) After hearings, fix just, reasonable, non-discriminatory and non-preferential rates and charges for the public storage of grain.

[fol. 24] (g) After hearings, issue an order prohibiting the discriminatory practices enumerated above, and establishing just, reasonable, safe, proper, adequate and efficient grain storage and warehousing service.

(h) After hearings, assess penalties for such violations of the Illinois state constitution and Illinois statutes as have occurred, including the cancellation of grain warehouse licenses.

(i) Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific.

(j) Enter such order or orders from time to time during the hearings as the necessities and justice of the situation require, in order to afford maximum relief as promptly as possible.

Daniel F. Rice & Company, By Joseph J. Rice.

Irvin Rooks, Lee A. Freeman, *Attorneys for Plaintiff*, 3710—135 S. LaSalle St., Chicago 3, Illinois.

State of Illinois,
County of Cook, ss.

Joseph J. Rice, being first duly sworn, on oath deposes and says that he is a partner of Daniel F. Rice & Company,

plaintiff in the above entitled cause; that he has read the foregoing complaint by him subscribed on behalf of said plaintiff; that he knows the content thereof and that the allegations therein contained are true of his own knowledge, information and belief.

—— ——

Subscribed and sworn to before me this 28th day of July, A. D. 1944. —— ——, Notary Public.

[fol. 25] EXHIBIT "B"

State of Illinois

Illinois Commerce Commission

(Caption—32267)

Motion to Dismiss

Respondents, Rosenbaum Bros., Santa Fe Elevator Corporation, Norris Grain Company, Cargill, Inc., Continental Grain Company, Great Lakes Elevator Corporation, Statton Grain Company, and each of them move the Commission as follows:

I

To dismiss complainants' complaint, because the subject-matter thereof is beyond the jurisdiction of said Commission and is exclusively within the jurisdiction of the Government of the United States, by reason of paragraph 3 of Section 8 of Article I of the Constitution of the United States and of the Act of Congress, commonly known as the United States Warehouse Act (7 U. S. C. Section 241, et seq.) and the Act of Congress commonly known as the Commodity Exchange Admin tration Act, (7 USC Section 1, et seq.) and of the official Regulations promulgated thereunder. In support of said motion, a copy of each of said Acts and the Regulations thereunder, is hereto attached, marked "Exhibit A" and "Exhibit B", respectively.

II

In the alternative, and without waiving the foregoing motion to dismiss, these Respondents, and each of them, move the Commission to strike said complaint and each

paragraph thereof separately, and more particularly Paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), 10, 11, 12, 13, [fol. 26] 13(a), 13(b), 13(e), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and 16, for lack of jurisdiction in the Commission for the reasons urged in Section I hereof.

Respectfully submitted, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, and Stratton Grain Company, by —— ——, 135 South LaSalle Street, Chicago, Illinois, Its Attorney. Continental Grain Company, by —— ——, 11 South LaSalle Street, Chicago, Illinois, Its Attorneys. Rosenbaum Bros., and Cargill, Inc., by —— ——, 231 South LaSalle Street, Chicago, Illinois, Their Attorneys.

Exhibit "A"—Regulations for Warehousemen Storing Grain, approved May 9, 1931, amended December 17, 1936. Regulations of the Secretary of Agriculture under the United States Warehouse Act of August 11, 1916, as amended.

Exhibit "A" re Motion to Dismiss.

Exhibit "B"—Commodity Exchange Act, as amended. Rules and Regulations of the Secretary of Agriculture promulgated thereunder. Orders of Commodity Exchange Commission pursuant to Section 4(a) and order of Secretary of Agriculture pursuant to Section 5(a)(4) of Act.

Exhibit "B" re Motion to Dismiss.

[fol. 27] EXHIBIT "C"

State of Illinois

Illinois Commerce Commision, Springfield

32267

DANIEL F. RICE & COMPANY,

vs.

THE CHICAGO GRAIN CORPORATION, et al.

Complaint as to unjust, unreasonable and discriminatory rates and charges, the maintenance of discriminatory practices, and the violation of law by public grain warehouses.

October 11, 1944.

To All Interested Parties:

Notice of Denial of Motions; and of Setting

You are hereby notified that the Commision, in conference on October 10, 1944, denied the following motions in the above-styled proceeding:

(1) Motion by respondents, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc. to dismiss the complaint filed in this case on July 28, 1944, on the ground that the Commision is without jurisdiction of the subject matter thereof;

(2) Alternative Motion by respondents, Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc. to strike the complaint filed in this case on July 28, 1944, and each paragraph thereof separately, and more particularly Paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), [fol. 28] 10, 11, 12, 13, 13(a), 13(b), 13(c), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and 16, for lack of jurisdiction in the Commission for the reasons urged in Section I of Motion to Dismiss case filed herein on August 30, 1944;

(3) Motion by respondents, Chicago Grain Corporation and Norris Grain Elevator Company, to dismiss the complaint filed in this case on July 28, 1944, on the ground that the complaint lacks particularly and is substantially insufficient in law.

(4) Motion by respondent, Board of Trade of the City of Chicago, that it be dismissed from this proceeding on the ground that the Commission is without jurisdiction of the subject matter of this complaint filed in this case on July 28, 1944, in so far as the same is directed against said respondent, Board of Trade of the City of Chicago.

You are hereby further notified that the Commission has set the above case for hearing at the office of the Commission at Chicago, Illinois, 19th Floor, 160 North LaSalle Street, on Tuesday, October 24, 1944, at the hour of 10:00 A. M.

Kindly acknowledge receipt of this notice.

Very truly yours, Illinois Commerce Commission,
(s.) Joseph F. Gubbins, Secretary.

NMB/bg

[fol. 29] In the District Court of the United States

[Title omitted]

Notice of Motion—Filed October 23, 1944

To: Irvin Rooks & Lee A. Freeman, Rm. 3710—135 S. La Salle St. George F. Barrett, Attorney General of the State of Illinois, 208 S. La Salle Street.

Please Take Notice that the undersigned will bring the attached Motion for a Preliminary Injunction on for hearing before Judge Elwyn R. Shaw, or before such other judge [fol. 30] who may be sitting in his place and stead, in Room 207, United States Court House, Chicago, Illinois, on Monday, October 23, 1944, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Ferre C. Watkins, 135 S. La Salle St., Attorney for Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes Elevator Corporation and

Stratton Grain Company. Poppenhusen, Johnston, Thompson & Raymond, 11 S. La Salle St., Attorneys for Continental Grain Company. Mayer, Meyer, Austrian & Platt, 231 S. LaSalle Street, Attorneys for Rosenbaum Bros. and Cargill, Inc.

Received a copy of the above and foregoing notice, together with copy of Motion for a preliminary Injunction therein mentioned, this 20th day of October, 1944.

George F. Barrett, Attorney General. Irvin Rooks and Lee A. Freeman.

[fol. 31] IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

MOTION FOR PRELIMINARY INJUNCTION—Filed October 23, 1944

Come now plaintiffs, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., and move the court for a preliminary injunction in the above entitled cause enjoining

(a) the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., their agents, servants, employees and attorneys, from further prosecuting proceedings under the complaint of said defendants before the Illinois Commerce Commission, in which said defendants seek to have said Illinois Commerce Commission regulate public elevator warehouses which the plaintiffs operate under licenses and regulations issued by the Secretary of Agriculture pursuant to authority conferred upon him under the United States Warehouse Act (7 U. S. C., Section 241, et seq.);

(b) the defendant George F. Barrett, Attorney General of Illinois, from instituting or prosecuting against the plaintiffs, or any of them, any action or proceeding for alleged violation of the act commonly known as the Illinois Public Warehouse Act, approved April 15, 1871 (Ill. Revised Stat.

1943, Ch. 114, Sec. 191), and the act commonly known as the Illinois Commerce Commission Act (Ill. Revised Stat., Ch. 111⅔, Sec. 1, et seq.), all relating to the operation of warehouses for the purpose of storing grain; and

(c) the Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, from proceeding with hearings under an order of [fol. 32] said Commission of date October 10, 1944, or entering any further order in said proceedings, on the complaint of the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., demanding the regulation under the laws of Illinois of the operation by the plaintiffs of elevator warehouses belonging to said plaintiffs and presently operated under licenses and regulations issued by the Secretary of Agriculture of the United States under the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.).

The grounds in support of this motion are as follows:

1. Unless restrained, the defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., will immediately, and not later than October 24, 1944, proceed to prosecute a complaint filed and pending before the Illinois Commerce *Commerce* Commission and set for hearing October 24, 1944, in which the said defendants, contrary to law, seek to have the Illinois Commerce Commission regulate these plaintiffs in their operation of elevator warehouses in the State of Illinois, although the regulation of said plaintiffs as public warehousemen for the storage of grain for interstate commerce has been completely preempted and occupied by the Federal Government under the United States Warehouse Act (7, U. S. C., Section 241, et seq.) and the regulations thereunder.

2. Unless restrained, the defendant George F. Barrett, Attorney General of the State of Illinois, will institute proceedings and prosecutions to enforce against these plaintiffs, and each of them, and their respective officers, agents, servants and employees, pains, penalties and forfeitures

provided for under the Illinois Law respecting public grain warehousemen, although these plaintiffs, operating elevator warehouses federally licensed, are not amenable to such Illinois laws respecting public grain warehousemen, because the field of regulation of public grain warehousemen has been completely preempted and occupied by the United States Government under the act commonly known as the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.) and of the regulations thereunder.

[fol. 33] 3. Unless restrained, the Illinois Commerce Commission, John D. Biggs, its Chairman, and William Parrillo, Frank Peska, Edwin A. Rosenstone, Val. J. Washington, members of said Commission, they will immediately, to-wit, October 24, 1944, under an order of said Commission entered on October 10, 1944, begin hearings on the complaint of the defendants Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as a partnership under the firm name and style of Daniel F. Rice & Co., in which proceedings the said defendants are determined to regulate, or to seek regulation of, the plaintiffs as warehousemen under the laws of Illinois, although the plantiffs are in their operations as warehousemen, solely under the jurisdiction of the United States Government, by reason of the United States Warehouse Act and the regulations thereunder. By an order of said Commission of date October 10, 1944, said Commission has already determined that it has jurisdiction to regulate these plaintiff warehousemen and has set hearings on the said complaint of the defendant Daniel F. Rice, et al. for October 24, 1944.

4. Immediate and irreparable injury, loss and damage will result to the plaintiffs by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein. The plaintiffs have no adequate remedy at law.

5. If this preliminary injunction be granted, the injury, if any, to defendants herein, if final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond.

Ferre C. Watkins, Attorney for Santa Fe Elevator Corporation, Norris Grain Company, Great Lakes

Elevator Corporation and Stratton Grain Company; Poppenhusen, Johnston, Thompson & Raymond, Attorneys for Continental Grain Company; Mayer, Meyer, Austrian & Platt, Attorneys for Rosenbaum Bros. and Cargill, Inc.

[fol. 34] In United States District Court

(Caption—44-C-1257)

Appearance—Filed November 1, 1944

Mr. Clerk:

I enter my appearance as attorney for Illinois Commerce Commission, John D. Biggs, its Chairman, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of Illinois, in the above-entitled case.

Dated at Chicago, Illinois, on 1st day of November, 1944.

George F. Barrett, Attorney General of Illinois, Address: 208 S. La Salle St., Rm. 786, Chicago.

[File endorsement omitted]

[fol. 35] In the District Court of the United States

(Caption—44-C-1257)

Appearance—Filed November 8, 1944

To the Clerk of the United States District Court:

We hereby enter our appearance in the above entitled cause as attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley.

Dated at Chicago, Illinois, on the 8th day of November, 1944.

Irvin Rooks, Lee A. Freeman, Attorneys for Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, 135 S. LaSalle St., Suite 3710, Chicago 3, Illinois, Andover 2112.

[fol. 36] In the District Court of the United States

* * (Caption—44-C-1257) * *

Answer of Illinois Commerce Commission and Its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, to Plaintiffs' Motion for a Preliminary Injunction—Filed December 28, 1944

Come now the defendants, Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, to answer the motion of the plaintiffs for a preliminary injunction in the above entitled cause and for answer state:

1. These defendants deny the allegations contained in paragraph 1 of said motion, wherein it is stated that "the defendants, contrary to law, seek to have the Illinois Commerce Commission regulate these plaintiffs in their operation of elevator warehouses in the State of Illinois, although the regulation of said plaintiffs as public warehousemen for the storage of grain for interstate commerce has been completely preempted and occupied by the Federal Government under the United States Warehouse Act (7, U. S. C., Sec. 241, et seq.) and the regulations thereunder." And these defendants specifically deny the allegations contained in paragraph 1 of said motion wherein it is concluded that the regulation of public warehousemen has been completely [fol. 37] preempted and occupied by the Federal Government under the United States Warehouse Act.

2. These defendants deny the allegations contained in paragraph 2 of said motion, and on the contrary allege that no action has been instituted by the Attorney General of Illinois to enforce any statutes or penalties against the plaintiffs herein nor has there been any threatened action by the Attorney General of Illinois against the said plaintiffs for the prosecution of any penalties against the said

plaintiffs; that in the event the Attorney General of Illinois should file or institute such proceedings for penalties or forfeitures under the Illinois statutes, the plaintiff warehousemen would have an adequate opportunity to defend said proceeding; that these defendants specifically deny the allegations contained in paragraph 2 of said motion, wherein the plaintiffs conclude that they are not amenable to the Illinois laws with respect to public grain warehousemen.

3. That these defendants deny the allegations contained in paragraph 3 of said motion, wherein it is stated that the Illinois Commerce Commission and its members "will immediately, to-wit: October 24, 1944, under an order of said Commission entered on October 10, 1944, begin hearings on the complaint of the defendants Daniel F. Rice," etc.; that defendants deny the conclusions set forth in paragraph 3 that the plaintiff warehousemen are solely under the jurisdiction of the United States Government by reason of the United States Warehouse Act and the regulations thereunder; that these defendants admit the allegations contained in paragraph 3 of said motion, wherein it is alleged that "By an order of said Commission of date October 10, 1944, said Commission has already determined that it has jurisdiction to regulate these plaintiff warehousemen"; and these defendants further allege that the said Commission by its order of October 10, 1944 found that it had jurisdiction to regulate the plaintiff warehousemen with respect to the issues presented in the Rice complaint.

4. That these defendants specifically deny the allegations contained in paragraph 4 of said motion, wherein it is alleged that "Immediate and irreparable injury, loss [fol. 38] and damage will result to the plaintiffs by reason of the threatened action of the defendants, as more particularly appears in the verified complaint filed herein." And these defendants further deny that the plaintiffs have no adequate remedy at law, as set forth in paragraph 4 of said motion.

5. That these defendants deny the allegations contained in paragraph 5 of said motion, wherein it is stated that "If this preliminary injunction be granted, the injury, if any, to defendants herein, if final judgment be in their

favor, will be inconsiderable and will be adequately indemnified by bond."

6. That these defendants allege that the court in the above entitled cause is without jurisdiction of the subject matter and of the parties hereto by reason of section 24 (1) of the Judicial Code, Title 28 U. S. C. A. sec. 41 (1), commonly referred to as the Johnson Act Amendment of 1934; that the court is without jurisdiction to grant any relief to plaintiffs for the reason that the complaint filed herein is not properly verified and does not establish a basis for equitable relief; that plaintiffs have failed to set forth any facts in their complaint herein or in the motion for preliminary injunction herein which in any way demonstrates that the plaintiffs will suffer grave and irreparable damage unless equity grants relief herein; that the court herein is without jurisdiction to grant any relief to the plaintiffs herein for the reason that plaintiffs have to exhaust their statutory or administrative remedies available to them; that this court is without jurisdiction of the complaint and motion herein for the reason that plaintiffs have an adequate remedy at law; that this court is without jurisdiction of the subject matter and the parties hereto for the reason that plaintiffs have failed to set forth sufficient allegations in their complaint filed herein or the motion field herein which will grant federal jurisdiction herein; that this court is without jurisdiction of the subject matter and of the parties hereto for the reason that the U. S. Warehouse Act, 7 U. S. C. A. sec. 241, as amended, is limited in its scope and does not preclude jurisdiction of the Illinois Commerce Commission; that this court lacks jurisdiction herein for the reason that the U. S. Warehouse Act, as aforesaid, does not regulate the matters in issue [fol. 39] before the Illinois Commerce Commission on the Rice complaint, whereas the statutes and laws of the State of Illinois do make provisions for the disposition of said issue; that the plaintiffs have failed to set forth a cause of action in their complaint filed herein or in the motion for preliminary injunction filed herein upon which this court can grant any relief in law or in equity.

7. That certain of the plaintiffs herein have submitted to the jurisdiction of the Illinois Commerce Commission on many occasions in the past years through the filing of their own petitions and through participation in hearings before

said Commission; that certain of the said plaintiffs did receive the benefits and protection of the regulatory power of the Commission; that no petitions for rehearing or appeals were taken from the orders of the Illinois Commerce Commission involving said plaintiffs; that the title, number and dates of said matters before the Commission are more fully set forth in the brief filed in support of defendants' position; that by reason thereof plaintiffs are now estopped from denying state jurisdiction.

8. That on December 15, 1944, Cargill Incorporated, one of the plaintiffs herein, did file a petition before the Illinois Commerce Commission for the consent and approval of the Commission to the sale of federally licensed grain elevator located in St. Clair County, Illinois, No. 32523; that in the said petition which was sworn to by the President and Secretary of Cargill Incorporated, one of the plaintiffs herein, it was alleged that said warehouse was a federally licensed warehouse under the United States Warehouse Act and further alleged that it is defined as a public utility in Section 10 of the Illinois Public Utilities Act; that on December 15, 1944, a hearing was held before the Illinois Commerce Commission on said petition; that said petition was filed and a hearing held thereon while plaintiffs' motion for a preliminary injunction was still pending before this Court; that by reason thereof plaintiffs cannot and are now estopped from denying the jurisdiction of the Illinois Commerce Commission and the complaint herein should be forthwith dismissed.

[fol. 40] Wherefore, these defendants pray that the motion of the plaintiffs herein for a preliminary injunction be denied.

Illinois Commerce Commission and its Chairman, John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George B. Barrett, Attorney General of the State of Illinois, Attorney for Said Defendants.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

MOTION OF ILLINOIS COMMERCE COMMISSION AND ITS CHAIRMAN, JOHN D. BIGGS, AND WILLIAM PARRILLO, FRANK PESKA, EDWIN A. ROSENSTONE AND VAL. J. WASHINGTON, MEMBERS OF SAID COMMISSION, AND GEORGE F. BARRETT, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, TO STRIKE THE PLAINTIFF'S COMPLAINT AND DISMISS THE CAUSE—Filed December 28, 1944

Now comes Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, members of said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, their attorney, and for this their motion to strike the plaintiffs' complaint and to dismiss the plaintiffs' cause, say and show unto the court that the said complaint is infirm, informal, insubstantial and [fol. 41] insufficient in law and in equity; and as and for the particular grounds of the said motion the defendants say and show unto this court:

1. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint does not fairly make, state or plead a cause of action under the constitution or laws of the United States of America.

2. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the Federal District Court lacks jurisdiction by reason of section 24(1) of the Judicial Code, Title 28, U. S. C. A., sec. 41(1), commonly referred to as the Johnson act, Amendment of 1934.

3. That this court is without jurisdiction of the subject matter and the parties to this cause because the complaint is not properly verified and does not establish a basis for equitable relief.

4. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the

complaint does not allege or show that the plaintiffs have first exhausted their administrative or statutory remedies available to them by the statutes of the State of Illinois.

5. That this court is without jurisdiction of the subject matter of this cause and the parties hereto because the complaint fails to show that the plaintiffs had no adequate remedy at law.

6. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint fails to show that plaintiffs will suffer grave and irreparable damage unless equity grants relief.

7. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead any case, cause of action or ground of relief either at law or in equity.

8. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint does not make, state or plead a case because of action within Federal jurisdictional requirements.

9. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the United States Warehouse act, 7 U. S. Code, sec. 241, as amended, is limited in its scope and does not preclude the [fol. 42] jurisdiction of the Illinois Commerce Commission of agricultural warehouses pursuant to the constitution and statutes of the State of Illinois.

10. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because it appears upon the face of said complaint that the United States Warehouse act is limited in its scope and does not preempt the field of regulation of grain warehouses with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint.

11. That this court is without jurisdiction of the subject matter of this cause and of the parties hereto because the complaint is otherwise and in other matters, respects and particulars infirm, informal, insubstantial and insufficient in law and in equity.

Wherefore, the defendants pray that the plaintiff's complaint be stricken and that the above entitled cause be dismissed at the cost of the plaintiffs.

Illinois Commerce Commission and John D. Biggs, William Parrillo, Frank Peska, Edwin A. Rosenstone and Val. J. Washington, Members of Said Commission, and George F. Barrett, Attorney General of the State of Illinois, by George F. Barrett, Attorney General of the State of Illinois, Attorney for Said Defendants.

[fol. 43] In the District Court of the United States

* * (Caption—44-C-1257) * *

Answer of Defendants Rice, et al.—Filed December 30, 1944

Defendants, Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Co., a partnership, by their attorneys Irvin Rooks and Leo A. Freeman, separately answering the complaint of the plaintiffs in this action, state:

First Defense

The federal district court is precluded from taking jurisdiction in this matter under the 1934 Amendment of Section 24(1) of the Judicial Code (Title 28, U. S. C. A., Sec. 41(1)), commonly known as the Johnson Act.

Second Defense

The suit is premature and must be dismissed since plaintiffs failed to exhaust the administrative and statutory remedies available to them before the Illinois Commerce Commission.

Third Defense

Plaintiffs possess a plain, speedy and adequate remedy at law.

Fourth Defense

Plaintiffs seek to enjoin the Rice defendants and defendants Illinois Commerce Commission and its members from taking any further action in the cause presently pending

before that administrative body (Docket No. 32267). There are three additional parties defendant in the action before the Illinois Commerce Commission, who are neither parties plaintiff nor defendant in the instant action. Therefore, the relief prayed by plaintiffs is improper and beyond the power of the court to grant.

[fol. 44] Fifth Defense

The complaint fails to state a claim against these defendants upon which equitable relief can be granted, and fails to establish by affidavit, or otherwise, facts to warrant the issuance of either a temporary or permanent injunction.

Sixth Defense

Plaintiffs fail to clearly and positively establish an actual or imminent threat of grave and irreparable damage amounting to manifest oppression unless injunctive relief were granted.

Seventh Defense

The complaint must be dismissed and injunctive relief denied since the United States Warehouse Act, as amended (7 U. S. C. A., Secs. 241 et seq.), is limited in scope and does not preempt the field of regulation of federally licensed grain warehouses with respect to those matters in issue before the Illinois Commerce Commission on the Rice complaint, nor does said federal enactment preclude the Illinois Commerce Commission from exercising regulatory authority over the plaintiffs herein. A copy of the Illinois Public Utilities Act (Ill. Rev. Stats. (1943), Ch. 113⅔) is attached hereto as Exhibit "A" and, by this reference, made a part of this answer.

Eighth Defense

Defendants, further answering, state:

(1) As to Paragraph I of the complaint, deny the conclusion that this court has jurisdiction over this action, and deny that plaintiffs have a right derived from federal law to conduct their business free from regulation and interference by the Illinois Commerce Commission, or to store and own grain in public warehouses operated by them.

(2) Admit Paragraph II of the complaint.

(3) Admit that each of the plaintiffs has been issued a license by the Secretary of Agriculture of the United States, pursuant to the United States Warehouse Act; that the named plaintiffs deal in grain both on their own account and as agents for others. Defendants aver upon information and belief that each of these plaintiffs, prior to their being issued a federal license under the aforesaid act and [fol. 45] during the period of 1916 and thereafter, have and did deal in grain both on their own account and as agents for others. As to such other matters alleged in Paragraph III, defendants have no knowledge or information sufficient to form a belief as to the truth of the averments, and therefore deny said allegations, including the allegations that Great Lakes Elevator Corporation does not deal in grain both on its own account and as agent for others; that plaintiffs store grain for interstate commerce, or that all of the public grain stored is for interstate commerce; that they have duly filed their schedule of rates, charges and practices with said Secretary of Agriculture; or that the schedules of rates, charges and practices constitute proper and sufficient schedules. As to these matters, defendants demand strict proof.

(4) Admit Paragraph IV of the complaint.

(5) Admit the allegations in Paragraph V of the complaint, except defendants do not have sufficient knowledge and information to form a belief with respect to the statement that all of the grain shipped into and out of the Chicago market (stated at approximately two billion bushels for the year ended December 31, 1943) originates in and is destined to states other than Illinois, and therefore demand strict proof thereof. Defendants deny that all of the warehouse receipts issued by plaintiffs are in general use upon the Board of Trade in satisfaction of futures contracts, and that such receipts are instruments of interstate commerce.

(6) Admit, as alleged in Paragraph VI of the complaint, that they filed with the Illinois Commerce Commission a complaint charging these plaintiffs with violations of the Illinois Public Utilities Act. But defendants affirmatively state that said charges were also made in the same complaint against the Chicago Grain Corp., Norris Grain Ele-

vator Co., (state licensed warehousemen) and General Mills, Inc.-Star Grain Division (a federal licensed warehouseman). Said complaint is still pending, and none of these three parties has contested the jurisdiction of the Illinois Commerce Commission, or sought to restrain the proceedings before that agency.

(7) Admit Paragraph VII of the complaint. Defendants affirmatively state that, prior to entering into the hearing on plaintiffs' motion to dismiss, the plaintiffs were, on or about August 25, 1944, duly served with a proper notice by the Illinois Commerce Commission of the setting of the proceedings for hearing on September 12, 1944.

[fol. 46] (8) Admit Paragraph VIII of the complaint.

(9) Defendants deny each of the allegations of Paragraph IX of the complaint, including the allegations that the Illinois Commerce Commission, in overruling the motion to dismiss the complaint pending before that body, has illegally usurped jurisdiction to regulate public grain warehouses operated by plaintiffs under federal licenses; that plaintiffs are subject solely to regulation by the United States Government; that the federal government has preempted and occupied the field of regulation of public grain warehouses operating under licenses issued by it; that the regulation of plaintiffs' warehouses *are* beyond the jurisdiction of the Illinois Commerce Commission and the State of Illinois. Defendants affirmatively state that the United States Warehouse Act, as amended, is limited in scope and does not preempt the field of regulation of federally licensed warehouses with reference to those matters in issue before the Illinois Commerce Commission on the Rice complaint. Nor does said federal enactment preclude the Illinois Commerce Commission from exercising regulatory authority over the plaintiffs herein. Said commission is empowered by virtue of express state statutory authority to entertain, hear and grant the relief prayed by the Rice complaint.

(10) Defendants admit, as alleged in Paragraph X of the complaint, that under the constitution of the state of Illinois, as construed by the supreme court of that state, it is illegal for a public warehouseman to store his own grain in a public warehouse operated by him. Defendants affirmatively state that the Illinois constitutional provision

referred to by plaintiffs does not impose any penalties nor do the Illinois Public Utilities Act or Illinois Grain Warehouse Act impose any penalties for failure to comply with the said provision of the Illinois constitution. Defendants further admit that each of the plaintiffs (except Great Lakes Elevator Corporation) does business as an owner and merchandiser of grain, and regularly stores grain owned by it as well as that of others, but defendants have no knowledge or information to form a belief as to whether the Great Lakes Elevator Corporation conducts its business in a similar manner, nor the amount of grain, if any, these plaintiffs store for interstate commerce, and therefore demand strict proof thereof. Defendants deny that plaintiffs have any right to store their own grain in [fol. 47] their own warehouses or the assumption of jurisdiction by the Illinois Commerce Commission will destroy or threatens to destroy any property rights of plaintiff, or will anywise cause injury to plaintiffs.

(11) The allegation in Paragraph XI of the complaint, that the Illinois Commerce Commission will order plaintiffs to cease storing grain owned by them and stored in their own warehouses, is based upon speculation, belief and conjecture. Defendants further state that if the Illinois Commerce Commission should enter upon a hearing concerning the cause pending before it, such action would not throw a cloud upon the validity and negotiability, or impair the use or value, of warehouse receipts outstanding presently or in the future.

(12) As to matters alleged in Paragraph XII of the complaint, such matters are immaterial, state conclusions of law, and fail to state facts sufficient to invoke equity jurisdiction, and for these reasons defendants make no answer thereto.

(13) The allegations in Paragraph XIII of the complaint are based upon speculation, belief and conjecture. Defendants are informed and believe, and state the fact to be, that the Attorney General of the State of Illinois has not been requested by the Illinois Commerce Commission or anyone else to enforce any penalties of the Illinois statutes against these plaintiffs, has not threatened to, nor has he the necessary information to form the basis for the institution of a suit to enforce the penalties of the Illinois statutes.

Defendants further state that when and if the institution of a penalty suit becomes appropriate, the Attorney General of the State of Illinois would institute a single suit to collect all penalties which have then accrued, and that the plaintiffs in that suit would have an adequate and speedy opportunity to defend against said proceedings. Defendants deny the allegations of Paragraph XIII of the complaint that the Attorney General has threatened, intends to and will enforce the various pains, penalties, and forfeitures of the Illinois statutes against plaintiffs and their employees; and defendants further deny that plaintiffs and their employees will be involved in a multiplicity of legal proceedings, and plaintiffs' business or employees will otherwise be interfered with or damaged in any manner whatsoever.

(14) Defendants deny, as alleged in Paragraph XIV of [fol. 48] the complaint, that the order of the Illinois Commerce Commission dated October 10, 1944, is invalid upon its face, and that any proceedings pursuant thereto would be futile; that the hearings before the commission would be protracted; and that the plaintiffs would have no legal redress for the recoupment of any expenses to which they would be subjected in the defense of such proceedings. As to the other matters alleged in Paragraph XIV of the complaint, such matters are immaterial, state conclusions of law, and fail to allege facts sufficient to invoke equity jurisdiction, and for these reasons defendants make no answer.

Wherefore, Defendants Pray that this action be dismissed, with costs assessed against plaintiffs.

Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, Doing Business as Daniel F. Rice & Co., a Partnership, (S.) by Irvin Rooks, Lee A. Freeman, Attorneys for Defendants.

[fol. 49] *Duly sworn to by Joseph J. Rice. Jurat omitted in printing.*

Exhibit "A"—Illinois Public Utilities Act with amendments and supplementary enactments.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDMENT TO COMPLAINT AND THAT PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION BE HEARD UPON THE COMPLAINT AS THUS AMENDED—Filed February 19, 1945

Now Come The Plaintiffs, by their respective attorneys, and move this court for le ve to file instanter an amendment to their complaint herein in the following particulars:

(1) Strike out the verification by D. H. Lipsey.

(2) Insert in lieu thereof verifications on behalf of [fol. 50] each plaintiff, copies of which are attached hereto as Exhibit A.

Plaintiffs further move the court to enter an order that plaintiffs' motion for preliminary injunction be heard on the complaint as thus amended, together with all evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' notion for preliminary injunction is heard.

The grounds of this motion are that justice so requires in order that all issues be fully litigated in this matter.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo F. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

Exhibit "A"—Affidavits of Lipsey, Mayer, Templeton, Enke, Gerstenberg, Egermayer, and Austrian filed as amendment to complaint.

[fol. 54] IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—44-C-1257) • •

ORDER—February 19, 1945

This Cause Coming On To Be Heard, upon the plaintiffs' motion for leave to file an amendment to their complaint herein and for an order that this cause be heard upon the plaintiffs' complaint as thus amended, together with evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' motion for preliminary injunction is heard, and it appearing that justice requires that their motion be granted, and the court being fully advised,

It Is Therefore Ordered:

(1) That the plaintiffs be and hereby are granted leave to file their amendment to the complaint instanter.

(2) That the plaintiffs' motion for preliminary injunction be heard by this court upon the plaintiffs' complaint as thus amended, together with all evidence, affidavits, pleadings and other documents before the court at the time plaintiffs' motion for preliminary injunction is heard.

(3) That all defendants be and hereby are granted leave to file amended answer or amendments to answers previously filed on or before February 26, 1945, provided as to any defendant not filing under this leave, that the answer heretofore filed stand as the answers to the complaint as amended.

Enter:

(S.) Igoe, Judge.

Dated: February 19, 1945.

[fol. 52] IN THE DISTRICT COURT OF THE UNITED STATES

• • (Caption—44-C-1257) • •

AMENDMENT TO THE COMPLAINT—Filed February 19, 1945

Pursuant to leave granted by order of this court on February 19, 1945, plaintiffs file herein the following amendment to their complaint:

(1) Strike out verification by D. H. Lipsey.

(2) Insert in lieu thereof the verifications on behalf of each plaintiff, which are attached hereto.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company. (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company. (S.) Frank W. Sullivan, Leo F. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

[fol. 53] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

D. H. Lipsey, being first duly sworn, on oath deposes and says that he is Vice President of Norris Grain Company, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Norris Grain Company are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) D. H. Lipsey.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Simon Mayer, being first duly sworn, on oath deposes and says that he is Executive Vice-President of Continental Grain Company, a Delaware corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff; that he has read the foregoing complaint, and is familiar with the statements contained therein, and that the

statements contained therein respecting Continental Grain Company are true except those stated to be upon information and belief, and that those he believes to be true.

Simon Mayer.

Subscribed and sworn to before me this 13th day of February, A. D. 1945. Joseph Pinsley, Notary Public. (Seal.)

[fol. 54] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

Wallace Templeton, being first duly sworn, on oath deposes and says that he is President of Santa Fe Elevator Corporation, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of the said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Santa Fe Elevator Corporation are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) Wallace Templeton.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

William Enke, Jr., being first duly sworn, on oath deposes and says that he is Vice President of Stratton Grain Company, a Delaware Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Stratton Grain Com-

pany are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) William Enke, Jr.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

[fol. 55] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
County of Cook, ss:

R. A. Gerstenberg, being first duly sworn, on oath deposes and says that he is Secretary of Great Lakes Elevator Corporation, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Great Lakes Elevator Corporation are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) R. A. Gerstenberg.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

UNITED STATES OF AMERICA

Verification

STATE OF ILLINOIS,
County of Cook, ss:

Albert G. Egermayer, being first duly sworn, on oath deposes and says that he is Secretary of Cargill Incorporated, a Delaware Corporation, one of the plaintiffs in the above-entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Cargill Incorporated

[fol. 56] are true except those stated to be upon information and belief, and that those he believes to be true.

(S.) Albert G. Egermayer.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Bessie L. Harman, Notary Public, Hennepin County, Minn. My commission expires Oct. 5, 1951. (Seal.)

UNITED STATES OF AMERICA

Verification

STATE OF ILLINOIS,
County of Cook, ss:

Harvey S. Austrian, being first duly sworn, on oath deposes and says that he is President of Rosenbaum Brothers, an Illinois Corporation, one of the plaintiffs in the above entitled cause, and that he is duly authorized to verify the foregoing complaint on behalf of said plaintiff, that he has read the foregoing complaint and is familiar with the statements contained therein and that the statements contained therein respecting Rosenbaum Brothers are true, except those stated to be upon information and belief, and that those he believes to be true.

(S.) Harvey S. Austrian.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. (S.) Paul J. Hennig, Notary Public. My commission expires Dec. 18, 1948. (Seal.)

[fol. 57] IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

PLAINTIFFS' MOTION FOR LEAVE TO FILE AFFIDAVITS IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION—Filed February 26, 1945

Now Come The Plaintiffs, by their respective attorneys, and move this court for leave to file instanter certain affidavits in support of their motion for preliminary injunction, copies of which affidavits are attached hereto as Exhibit A.

The grounds of this motion are that justice so requires in order that all issues be fully litigated in this matter.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo E. Tierney, Attorneys for Rosenbaum Bros., and Cargill, Inc.

(Affidavits Attached But Not Copied.)

[fol. 58] In the District Court of the United States

* * (Caption—44-C-1257) * *

Order—February 26, 1945

This Cause Coming On To Be Heard upon the plaintiffs' motion for leave to file instanter certain affidavits in support of their motion for preliminary injunction, and it appearing that justice requires that their motion be granted, and the court being fully advised,

It Is Therefore Ordered, That the plaintiffs be and hereby are given leave to file instanter their affidavits in support of their motion for preliminary injunction.

Enter: (S.) Igoe, Judge.

Dated: February 26, 1945.

[fol. 59] In the District Court of the United States

* * (Caption—44-C-1257) * *

Affidavits Filed in Support of Plaintiffs' Motion for Preliminary Injunction—Filed February 26, 1945

Pursuant to leave granted by order of this court on February 26, 1945 plaintiffs hereby file herein the attached affidavits in support of their motion for preliminary injunction.

(S.) Ferre C. Watkins, Attorney for Great Lakes Elevator Corporation, Santa Fe Elevator Corpo-

ration, Norris Grain Company and Stratton Grain Company; (S.) Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Attorneys for Continental Grain Company; (S.) Frank W. Sullivan, Leo E. Tierney, Attorneys for Rosenbaum Bros. and Cargill, Inc.

[fol. 60] IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

AFFIDAVIT OF WALLACE TEMPLETON

STATE OF ILLINOIS,
County of Cook, ss:

Wallace Templeton, being first duly sworn, on oath deposes and says that he is President of Santa Fe Elevator Corporation, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Santa Fe Elevator Corporation, operates Santa Fe Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it August 1, 1939 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 1,800,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944, 6,978,449 bushels of grain of the value of $10,173,454.52 were received by said elevator from states other than Illinois, constituting sixty-eight percent (68%) of all grain received by said elevator during that period.

3. During the same period there were shipped from said elevator to states other than Illinois 9,989,260 bushels of grain of the value of $14,032,442.52, constituting ninety-eight and one-half percent (98½%) of all grain shipped from said elevator during that period.

4. On October 31, 1944 said plaintiff had federal warehouse receipts outstanding for grain stored in said Santa

Fe Elevator for 1,296,609 bushels, of which 676,715 bushels were stored for plaintiff's own account.

5. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture, which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

6. During the twelve month period prior to October 31, 1944 said plaintiff stored in Santa Fe Elevator 4,663,469 [fol. 61] bushels of grain for the Government of the United States or agencies thereof.

7. Since August 1, 1939, the date that Santa Fe Elevator Corporation received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals varying from two to six months.

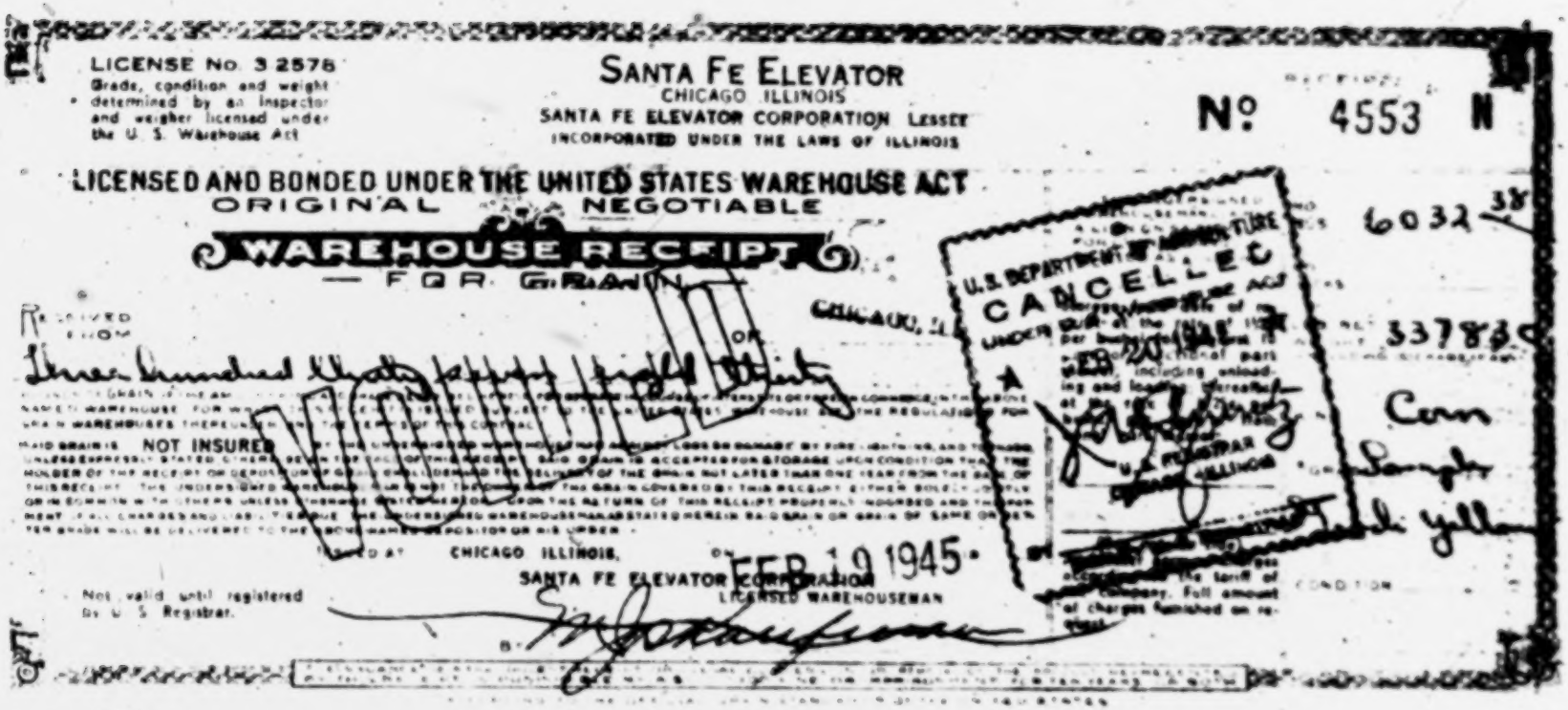
8. August 1, 1939 Santa Fe Elevator Corporation filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) Wallace Templeton.

Subscribed and Sworn to before me this 23rd day of February, A. D. 1945. (S.) Virginia B. Crowe, Notary Public. (Seal.)

(Here follows 1 Photolithograph, side folios 62-63)

EXHIBIT A.



LICENSE No. 3 2578
Grade, condition and weight determined by an inspector and weigher licensed under the U. S. Warehouse Act

SANTA FE ELEVATOR
CHICAGO ILLINOIS
SANTA FE ELEVATOR CORPORATION LESSEE
INCORPORATED UNDER THE LAWS OF ILLINOIS

No. 4553 N

LICENSED AND BONDED UNDER THE UNITED STATES WAREHOUSE ACT

ORIGINAL NEGOTIABLE

WAREHOUSE RECEIPT
— FOR GRAIN —

6032 38

CANCELLED

337860

Corn

Sample

RECEIVED FROM

Three hundred thirty-seven thousand eight hundred sixty

VOID

PAID GRAIN IS NOT INSURED

CHICAGO ILLINOIS, ON FEB 19 1945.

SANTA FE ELEVATOR CORPORATION
LICENSED WAREHOUSEMAN

Not valid until registered by U. S. Registrar.

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[fols. 64-65] IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257) * *

AFFIDAVIT OF WILLIAM ENKE, JR.

STATE OF ILLINOIS,
County of Cook, ss:

William Enke, Jr., being first duly sworn, on oath deposes and says that he is Vice President of Stratton Grain Company, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Stratton Grain Comany, operates Dickinson Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it September 16, 1940 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 800,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944, 82.28% of all grain shipped to or from said Dickinson Elevator originated outside of Illinois or was shipped to a destination outside of that state.

3. During the same period a total of 2,185,568 bushels of grain were stored in said elevator of which 1,129,264 bushels were plaintiff's own grain.

4. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

5. During the twelve month period prior to October 31, 1944 said plaintiff stored in Dickinson Elevator 708,019 bushels of grain for the Government of the United States or agencies thereof.

6. Since September 16, 1940, the date that Dickinson Elevator received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Ware-

house Act, as amended, at intervals varying from two to six months.

7. September 9, 1940 Stratton Grain Company filed with [fol. 66] representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) William Enke, Jr.

Subscribed and Sworn to before me this 23rd day of February, A. D. 1945.

(S.) Virginia B. Crowe, Notary Public. (Seal.)

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

IN THE DISTRICT COURT OF THE UNITED STATES

* * (Caption—44-C-1257). * *

AFFIDAVIT OF D. H. LIPSEY

STATE OF ILLINOIS,
County of Cook, ss:

D. H. Lipsey, being first duly sworn, on oath deposes and says that he is Vice President of Norris Grain Company, one of the plaintiffs in the above entitled cause, and has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Norris Grain Company, operates Wabash Elevator in Chicago, Illinois, for the storage of grain; that a federal license was issued to it February 14, 1939 pursuant to the provisions of the United States Warehouse Act, as amended; and that said elevator has a capacity of 1,500,000 bushels of grain.

2. In the twelve month period prior to October 31, 1944 3,432,873 bushels of grain of the value of $5,119,212.00 were received by said elevator from states other than Illinois, constituting sixty-two per cent (62%) of all grain received by said elevator during that period.

[fol. 67] 3. During the same period there were shipped from said elevator to states other than Illinois 4,518,447 bushels of grain of the value of $6,596,482.00, constituting eighty-five per cent (85%) of all grain shipped from said elevator during that period.

4. On October 20, 1944 said plaintiff had outstanding federal warehouse receipts representing a total of 797,579 bushels of grain stored in said Wabash Elevator. Of this total 166,149 bushels represented grain stored for plaintiff's own account in said elevator.

5. All federal warehouse receipts issued by said plaintiff are on forms furnished and required by the Department of Agriculture, which provide that the grain received by said elevator is "for storage in course of interstate or foreign commerce." A copy of one of said forms is attached hereto as Exhibit "A".

6. During the twelve month period prior to October 31, 1944 said plaintiff stored in Wabash Elevator 2,040,788 bushels of grain for the Government of the United States or agencies thereof.

7. Since February 14, 1939, the date that said Wabash Elevator received its federal license, as aforesaid, said elevator has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals varying from two to six months.

8. Prior to February 14, 1939 Norris Grain Company filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it

has been accepted by the United States Department of Agriculture.

(S.) D. H. Lipsey.

Subscribed and Sworn to before me this 23rd day of February, A.D. 1945. (S.) Virginia B. Crowe, Notary Public.

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

[fol. 68] In the District Court of the United States

(Caption—44-C-1257)

Affidavit of R. A. Gerstenberg

State of Illinois,
County of Cook, ss:

R. A. Gerstenberg, being first duly sworn, on oath deposes and says that he is Secretary of Great Lakes Elevator Corporation, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter set forth. Affiant further deposes and says that:

1. Said plaintiff, Great Lakes Elevator Corporation, operates the National Elevator in Chicago, Illinois, under a federal license issued to it September 28, 1942 pursuant to the provisions of the United States Warehouse Act, as amended, which license is now in full force and effect.

2. Said National Elevator has a capacity of 900,000 bushels, according to measurement of the United States Department of Agriculture.

3. During the period of one year prior to October 31, 1944, more than ninety-five percent (95%) of all grain received by said elevator was shipped from points outside the State of Illinois. During the same period, more than ninety percent (90%) of the grain shipped from said elevator was forwarded to points outside the State of Illinois.

4. On October 20, 1944 National Elevator had outstanding federal warehouse receipts for 552,200 bushels of grain, none of which was owned by said plaintiff.

5. Each federal warehouse receipt issued by National Elevator is on a form provided by the Department of Agriculture, a copy of which is attached hereto as Exhibit "A", and sets forth thereon that the grain received from the owner by said elevator is "for storage in course of interstate or foreign commerce."

6. Said elevator has stored no grain for the United States Government or agencies thereof, since November 1, 1943.

7. Since September 28, 1942, the date that National Elevator was granted its federal license, until the present [fol. 69] time, it has been visited, inspected and examined by representatives appointed under the United States Warehouse Act, as amended, at intervals of from two to six months.

8. September 1, 1942 Great Lakes Elevator Corporation filed with representatives of the United States Department of Agriculture its schedule of rates and charges for the storage and handling of grain, and thereafter has made no change in rates and charges without filing a proposed schedule with said representatives. Said plaintiff has posted and displayed its schedule of rates and charges in a prominent place in said elevator and elsewhere after it has been accepted by the United States Department of Agriculture.

(S.) R. A. Gerstenberg.

Subscribed and Sworn to before me this 23rd day of February, A.D. 1945. (S.) Virginia B. Crane, Notary Public. (Seal.)

Exhibit "A"—Warehouse Receipt like Exhibit "A" to Wallace Templeton affidavit except as to name of issuer, date and amount.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—44-C-1257)

AFFIDAVIT OF SIMON MAYER

Simon Mayer, being first duly sworn, on oath deposes and say- that he is Executive Vice President of Continental Grain Company, one of the plaintiffs in the above-entitled cause, and is authorized to make this affidavit in its behalf.

Affiant states:

That Rock Island Terminal C and D Elevators referred to in the Rice complaint are operated by Continental Grain Company under federal license No. 3-2277. That the initial federal license of said company was procured in February, 1938. That pursuant to the provisions of the United States Warehouse Act said company has on file with the Secretary of Agriculture its schedule of rates and charges both with respect to grain stored in its elevators by Commodity Credit Corporation and that stored by others. That said company has duly filed its bond in accordance with the re- [fol. 70] quirements of the United States Warehouse Act and is entitled to be designated a federally bonded warehouse under said Act.

That Terminal Elevator C above referred to has storage capacity of approximately 3,000,000 bushels and Elevator D approximately 1,000,000 bushels. That for the twelve (12) months ended October 20, 1944, the number of bushels of grain stored in said elevators and the dollar value of said grain was as follows:

Grain	No. of bu.	Dollar value
Wheat	2,211,440	$ 3,648,876
Corn	10,479,545	12,470,659
Oats	1,259,535	755,721
Rye	1,584,923	1,822,662
Barley	31,477	36,199
Soybeans	1,057,883	2,115,767

That the percentage of such grain shipped into said elevators from other states for said period was as follows:

Wheat	92½%
Corn	12 %
Oats	88 %

Rye	100 %
Barley	100 %
Soybeans	45 %

That the percentage of grain during such period received from points in Illinois for shipment to other states was as follows:

Wheat	94%
Corn	79%
Oats	None
Rye	None
Barley	None
Soyabeans	80%

That the number of bushels and dollar value of grain stored and handled in said elevators for the account of Continental Grain Company was as follows:

Grain	No. of bu.	Dollar value
Wheat	776,020	$ 1,280,443
Corn	9,368,624	11,148,662
Oats	1,259,535	755,721
Rye	1,584,923	1,822,662
Barley	31,477	36,199
Soyabeans	1,057,883	2,115,767

[fol. 71] That the number of bushels and dollar value of grain stored and delivered for the account of Commodity Credit Corporation during said period was as follows:

Grain	No. of bu.	Dollar value
Wheat	1,335,342	$2,203,314
Corn	37,041	44,079

That as at October 20, 1944 there were outstanding warehouse receipts issued by said company evidencing the following number of bushels of grain:

Grain	No. of bu.
Corn	757,826
Oats	9,727
Wheat	117,822
Rye	1,400,093

That of said issued and outstanding warehouse receipts at that date Continental Grain Company was shown in said

receipts (as required by the United States Warehouse Act) to be the owner of grain to the following extent:

Grain	No. of bu.
Corn	662,875
Oats	9,727
Wheat	27,975

That as at said last mentioned date there was pledged as collateral for loans warehouse receipts for 602,444 bushels of corn stored in said company's warehouses, which said receipts showed on their face that Continental Grain Company was the owner of the grain evidenced by said receipts. That for the twelve months ended October 20, 1944, the dollar value of warehouse receipts issued by Continental Grain Company (in which said Company is shown to be the owner of the grain evidenced thereby) which were pledged as collateral securities for loans exceeded $7,500,000.

Affiant further states that approximately every three months between 6 to 9 representatives of the United States Department of Agriculture examined the elevators of said company and the grain stored therein and otherwise checked the said company in regard to compliance with the provisions of the United States Warehouse Act and regulations thereunder.

Further affiant sayeth not.

Simon Mayer.

Subscribed and sworn to before me this 23rd day of February, 1945. Joseph Prusby, Notary Public. (Seal.)

[fol. 72] In the District Court of the United States

[Caption—44-C-1257]

Affidavit of M. R. Glaser

State of Illinois,
County of Cook, ss:

M. R. Glaser, being first duly sworn, on oath deposes and says that he is a Vice President of Rosenbaum Brothers, an Illinois corporation, one of the plaintiffs in the

above-captioned case, and that he has personal knowledge of the facts hereinafter stated. Affiant further says that:

1. Said Rosenbaum Brothers leases a grain elevator, known as the "Calumet Elevator", located at 102nd Street and the Calumet River, in Chicago, Illinois, and, since July 1, 1937, has operated said elevator as a public warehouse, for the storage of grain, under license issued pursuant to the provisions of the United States Warehouse Act and the Rules and Regulations promulgated thereunder.

2. The rated capacity of said Elevator is 2,800,000 bushels. During the twelve-month period prior to October 31, 1944, there were placed in store in said Calumet Elevator a total of 17,943,223 bushels of grain of all kinds, and 17,692,913 bushels of grain were shipped from said Elevator. It is estimated that of said grain approximately 7 per cent was received from and shipped to points in the State of Illinois and the balance, or 93 per cent, was received from and shipped to points in States other than Illinois.

3. Of the amount of grain so shipped, 8,914,870 bushels were shipped on account of the Commodity Credit Corporation, leaving a balance of 8,778,043 bushels, which was shipped for the account of Rosenbaum Brothers and others.

4. On October 31, 1944, this plaintiff had outstanding negotiable warehouse receipts representing grain stored in said Elevator respecting 1,913,168 bushels of grain, of which 703,241 bushels were owned by Commodity Credit Corporation.

5. All warehouse receipts issued by this plaintiff respecting grain in store at said Elevator contain a statement that the related grain was received "for storage in the course of interstate commerce". The said Elevator has been inspected by representatives of the federal government at irregular intervals, varying from two to four [fol. 73] months. It is the understanding of this affiant that the said Elevator, during the period it has been operated under federal license, has not been inspected by representatives of the State of Illinois. This plaintiff has kept on file with the Secretary of Agriculture, or his successor, schedules or tariffs of rates and charges for the handling and storage of grain ever since the issuance of its federal license. All changes in said tariffs or schedules have also been

filed with said Secretary or his successors and copies of such tariffs and schedules, and all changes and amendments therein, have been posted by this plaintiff in a prominent place for public inspection at said Elevator.

M. R. Glaser.

Subscribed and sworn to before me this 23rd day of February, 1945. Paul J. Hennig, Notary Public. My commission expires Dec. 18, 1948. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES

[Caption—44-C-1257]

AFFIDAVIT OF JOSEPH E. BAILEY

STATE OF MINNESOTA,
County of Hennepin, ss:

Joseph E. Bailey, being first duly sworn, on oath deposes and says that he is an Assistant Vice President of Cargill, Incorporated, one of the plaintiffs in the above entitled cause, and that he has personal knowledge of each of the facts hereinafter alleged. Affiant further deposes and says that:

1. Said plaintiff, Cargill, Incorporated, owns the grain elevator known as "C. & N. W. Terminal Elevator & Annex" located at Chicago, Illinois, and during the entire calendar year 1944 operated, and now operates said C. & N. W. Terminal Elevator & Annex under a license issued July 1, 1937, pursuant to the provisions of the United States Warehouse Act and the rules and regulations promulgated thereunder. Said C. & N. W. Terminal Elevator & Annex has a capacity of approximately 9,300,000 bushels of grain.

[fol. 74] 2. During the calendar year 1944 there were placed in store in said C. & N. W. Terminal Elevator & Annex a total of 26,685,000 bushels (to the nearest thousand) of grain of all kinds; that of said 26,685,000 bushels, not less than eighty-five (85%) per cent thereof was shipped to, and received at said C. & N. W. Terminal Elevator & Annex from states other than Illinois.

3. That during the calendar year 1944 there were loaded out and shipped from said C. & N. W. Terminal Elevator & Annex a total of 26,731,000 bushels (to the nearest thousand) of all kinds of grain; that of said total, not less than eighty-two (82%) per cent of all said grain was shipped from said C. & N. W. Terminal Elevator & Annex to states other than Illinois.

4. Said plaintiff, Cargill, Incorporated, now leases and during the entire calendar year 1944, and prior thereto, was the owner of the grain elevator situated near East St. Louis, Illinois, and known as "Cargill East St. Louis Elevator 'R' "; that said plaintiff now operates and during all of the calendar year 1944 did operate said Cargill East St. Louis Elevator "R" under a license issued January 10, 1942, pursuant to the provisions of the United States Warehouse Act and the rules and regulations promulgated thereunder. Said Cargill East St. Louis Elevator "R" has a capacity of approximately 4,000,000 bushels of grain.

5. During the calendar year 1944 there were placed in store in said Cargill East St. Louis Elevator "R" a total of 7,210,000 bushels (to the nearest thousand) of grain of all kinds; that of said 7,210,000 bushels, not less than sixty-five (65%) per cent thereof was shipped to, and received at said Cargill East St. Louis Elevator "R" from states other than Illinois.

6. That during the calendar year 1944 there were loaded out and shipped from said Cargill East St. Louis Elevator "R" a total of 6,509,000 bushels (to the nearest thousand) of all kinds of grain; that of said total, not less than seventy (70%) per cent of all said grain was shipped from said Cargill East St. Louis Elevator "R" to states other than Illinois.

7. All warehouse receipts issued by said plaintiff covering grain stored in either of said elevators bear the statement on the face thereof that the grain received by said [fol. 75] elevators, respectively, was received "for storage in the course of interstate or foreign commerce." Both said elevators from the dates of their respective licenses, have been inspected and examined by persons authorized to do so under and pursuant to the United States Ware-

house Act, at intervals of from two to four months; and neither of said elevators has ever been inspected or examined by any representative of the State of Illinois at any time after the issuance of the licenses covering said elevators, respectively. All schedules or tariffs of rates and charges for the storage and handling of grain in and at each of said elevators since the dates of issuance of their respective licenses mentioned above, have been filed with and approved by the Secretary of Agriculture of the United States, and each change or amendment in any of said tariffs or schedules has likewise been filed with and approved by said secretary; said plaintiff has posted each such tariff or schedule of rates and charges and all changes and amendment therein and thereto in a prominent place in the respective elevator to which it applied.

8. On December 31, 1944 said plaintiff had outstanding warehouse receipts for grain stored in said C. & N. W. Terminal Elevator & Annex covering 8,463,994 bushels of grain, of which 1,670,031 bushels were owned by said plaintiff. On December 31, 1944 said plaintiff had outstanding warehouse receipts for grain stored in Cargill East St. Louis Elevator "R" covering 2,523,147 bushels of which 555,566 bushels were owned by said plaintiff.

9. During the calendar year 1944, said plaintiff stored in said C. & N. W. Terminal Elevator & Annex 3,144,182 bushels of grain for the United States or agencies thereof; that during the calendar year 1944 said plaintiff stored in said Cargill East St. Louis Elevator "R" 4,111,757 bushels of grain for the United States or agencies thereof.

(Signed) Joseph E. Bailey.

Subscribed and sworn to before me this 21st day of February, 1945. (Signed) Grace M. Olson, Notary Public, Hennepin County, Minn. My Commission Expires Oct. 5th, 1951. (Notarial Seal.)

[fol. 76] And afterwards on, to-wit, the 2nd day of March 1945 there were filed in the Clerk's office of said Court certain Affidavits On Behalf Of Illinois Commerce Com-

mission and Members Thereof, And on Behalf of the Attorney General in words and figures following, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES

[Caption—44-C-1257]

AFFIDAVIT ON BEHALF OF ILLINOIS COMMERCE COMMISSION AND MEMBERS THEREOF, AND ON BEHALF OF THE ATTORNEY GENERAL

STATE OF ILLINOIS,
County of Cook, ss:

Joseph F. Gubbins, being first duly sworn, on oath deposes and says that he is Secretary of the Illinois Commerce Commission of the State of Illinois, and keeper of the records of said commission.

Affiant states that on December 15, 1944, a verified petition was filed by Cargill, Inc., with the Illinois Commerce Commission for consent to and approval of the sale of a grain elevator and certain adjoining lands near the city of East St. Louis, and for the leasing of said property by the petitioner from the proposed purchaser. This case was duly docketed as Illinois Commerce Commission Docket No. 32523. A true and correct copy of said verified petition (without the attached exhibits) is attached hereto as Exhibit 1 and made a part of this affidavit.

Affiant further states that hearings were held before a duly authorized examiner of the Illinois Commerce Commission at which the applicant, Cargill, Inc. presented evidence in support of said verified petition, and on December 28, 1944, the commission duly entered an order consenting to and approving the sale of said grain elevator and adjoining lands, and its lease-back. A true, correct and [fol. 77] complete copy of the order made and entered of record by the Illinois Commerce Commission is attached hereto as Exhibit 2 and made a part of this affidavit.

Subscribed and sworn to before me this 27th day of February, A. D. 1945. Ella E. Mahan, Notary Public. My commission expires Jan. 26, 1949. (Seal.)

EXHIBIT 1

State of Illinois

Illinois Commerce Commission

(Stamp) Received Dec 15 1944 Illinois Commerce Commission Chicago Illinois.

Docket No. 32523

In the Matter of the Application of Cargill, Incorporated for Consent to and Approval of the Sale of a Grain Elevator and Certain Adjoining Lands and Easements in the Town of Centerville, Near the City of East St. Louis, in the County of St. Clair, Illinois, and for the Leasing of Said Property by Petitioner From the Proposed Purchaser

Petition

To the Honorable Illinois Commerce Commission:

Your Petitioner herein, Cargill, Incorporated, hereinafter sometimes referred to as "Cargill", hereby respectfully shows to the Commission:

1. Your Petitioner is a corporation organized and existing under the laws of the State of Delaware, duly authorized to transact business in the State of Illinois, and is the purchaser, under contract, from Alton and Southern Railroad of a certain grain elevator building and other im- [fol. 78] provements, the land upon which the same are situated and certain easements used or useful in connection therewith, all situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as Cargill East St. Louis Elevator "R". A full description of said land and easements is contained in Exhibit "A", which forms a part of Exhibit "1", hereto attached and made a part hereof. All of said land, easements and improvements thereof are hereinafter sometimes referred to as "said property". A plat, showing in the shaded portions thereof the several tracts of land upon which said improvements are situated and to which said easements relate is hereto attached, marked Exhibit "2", and made a part hereof. All of the terms and conditions of the transaction above mentioned, whereby said

property is being purchased by Cargill from Alton and Southern Railroad are contained in that certain Purchase Agreement dated July 24, 1940, a Supplemental Agreement dated May 26, 1941, and a Second Supplemental Agreement dated January 3, 1942, all of which said agreements have heretofore been submitted to the Commission, and said agreements and the transaction evidenced thereby have been approved by the Commission by its orders, all bearing Docket No. 29012 and being dated, respectively, July 25, 1940, June 3, 1941 and January 6, 1942.

2. Cargill now proposes to sell said property to Cahokia Elevator Co., a Delaware corporation, for whose benefit a bid in the sum of Five Hundred Thousand Dollars ($500,000), to be paid in cash has been made and has been accepted by Cargill, subject to the consent and approval of this Commission. The full terms and conditions of said proposed sale and purchase transaction are contained in a statement titled "General Information and Terms, Conditions and Specifications for Bids to Purchase Cargill East St. Louis Elevator 'R' " (dated October 11, 1944), the bid of Joseph M. Sinaiko, Isaac D. Sinaiko and Carl A. Sorling (dated November 17, 1944) and the letter of acceptance of said bid by Cargill (dated December 4, 1944). A copy of said statement, bid and letter of acceptance are hereto attached, made a part hereof, and together designated Exhibit "1".

3. There remains unpaid under the agreements referred to in paragraph 1 above, the principal amount of Three Hundred Twenty-five Thousand Dollars ($325,000) which, [fol. 79] prior to conveyance of said property by Cargill to said proposed purchaser, will be paid in full by Cargill, together with all accrued interest and other amounts, if any, owing to said Alton and Southern Railroad. The original, full purchase price of said property of Five Hundred Thousand Dollars ($500,000) is payable under said agreement in equal quarterly installments of Twelve Thousand Five Hundred Dollars ($12,500), each, payable on the 1st day of the months of January, April, July, and October, over and during the period from July 1, 1941 to April 1, 1951, inclusive.

4. Cargill now operates, and since Jan. 10, 1942 has operated all or a part of said grain elevator as a licensed pub-

lic grain warehouse under the United States Warehouse Act, and is defined as a public utility in Section 10 of the I" ois Public Utilities Act.

5. (a) The said grain elevator was constructed by Cargill for Alton and Southern Railroad under and pursuant to a Construction Agreement dated July 24, 1940, which required Cargill to construct the said elevator and to deliver same to said Railroad in completed form (except for railroad tracks) and ready for operation for a price not to exceed the sum of Four Hundred Sixty-six Thousand Dollars ($466,000). Under said Construction Agreement the Railroad was required to pay, and has paid Cargill the full sum of Four Hundred Sixty-six Thousand Dollars ($466,000) for the construction of said grain elevator.

(b) However, due to unforeseen foundation difficulties and the then existing labor situation in the East St. Louis area, the actual cost of construction of said grain elevator to Cargill was greatly in excess of the sum of Four Hundred Sixty-six Thousand Dollars ($466,000), the amount reimbursable to Cargill under said Construction Agreement, and Cargill thereby sustained a substantial reduction in its working capital, which is not received in the value of the property.

(c) Said grain elevator was substantially completed in the fall of 1942. In 1943, it became advisable for Cargill to purchase on contract or on mortgage security four plants, consisting of one large grain elevator, the C. & N. W. Terminal Elevator located at Chicago, Illinois, at a price of One Million Seven Hundred Eighty-three Thousand Five Hundred Forty-five Dollars ($1,783,545); a com- [fol. 80] bination soybean crushing, feed mill and grain storage plant at Cedar Rapids, Iowa for the sum of Three Hundred Thousand Dollars ($300,000); a combination soybean crushing, feed mill and grain storage plant at Ft. Dodge, Iowa for the sum of Five Hundred Thousand Dollars ($500,000); and a combination soybean crushing and grain storage plant at Springfield, Illinois for the sum of Six Hundred Thousand Dollars ($600,000). The total investment or commitment in these four properties is Three Million One Hundred Eighty-three Thousand Five Hundred Forty-five Dollars ($3,183,545), and the purchase of these plants was required by expediency in the case of the

grain elevator at Chicago, and by a need for diversification of Cargill's business in the other cases.

(d) In order to maintain a desirable relationship between working capital and investment in fixed assets, as well as to provide adequate working capital for expanded and diversified operations, it is deemed in the best interest of Cargill (as a grain dealer and as a public grain warehouseman) and in the public interest to consummate the proposed sale for which approval is hereby sought.

6. Cargill asserts that the proposed sale price represents the present market value of said property and that the terms and conditions of the proposed sale are fair and reasonable. Cargill further shows the Commission that, in an effort to obtain the best possible price and establish the market value of said property, it caused an advertisement (a copy of which is hereto attached, marked Exhibit "3", and made a part hereof) soliciting bids for the purchase of said property to be published in the following publications on the dates indicated:

Publication	Publication Dates
Chicago Journal of Commerce (Financial—commercial daily)	November 1, 7 and 10, 1944.
The Northwestern Miller (Weekly trade journal)	October 18 and 25, and November 1, 1944.
The Southwestern Miller (Weekly trade journal)	October 17, 24 and 31, 1944.
The National Grain Journal (Monthly trade journal)	October, 1944 issue.
The Grain & Feed Review (Monthly trade journal)	November, 1944 issue.
St. Clair County Record (Weekly legal newspaper)	October 27, 1944.

[fol. 81] In response to said advertisement the bid above mentioned, made for the benefit of said Cahokia Elevator Co., the proposed purchaser, in the sum of Five Hundred Thousand Dollars ($500,000) and one other bid in a substantially lesser sum, were received. Petitioner submits that, in view of the wide publicity given the proposed sale and the bids submitted on said property, the bid is a fair

measure of the present market value of said property. Further evidences of the market value of said property are (a) the purchase price of Five Hundred Thousand Dollars ($500,000) agreed to be paid by Cargill to Alton and Southern Railroad for said property, as shown by said Purchase Agreement dated July 24, 1940, and (b) the price of Four Hundred Sixty-six Thousand Dollars ($466,000), for which Cargill agreed to build said grain elevator for Alton and Southern Railroad.

7. Your Petitioner alleges and shows to the Commission that, by virtue of the facts asserted in this Petition and in the exhibits attached hereto, the public will be convenienced by the purchase and sale of the property as aforesaid, upon the terms and in the manner in this Petition and exhibits set forth.

8. Following the acceptance of the bid made for the benefit of said Cahokia Elevator Co., referred to in paragraph 2 above, said Cahokia Elevator Co. offered to lease said property to Cargill upon fair and reasonable terms, subject to the approval of this Commission. Thereafter, terms were agreed upon as shown in Exhibit "4" hereto attached and made a part hereof, which said Exhibit "4" is a true and full copy of the lease proposed to be entered into between Cargill and said Cahokia Elevator Co., consent to approval of which by this Commission is hereby applied for.

9. While, as hereinabove set out in paragraph 5, it is advisable for Cargill to consummate the proposed sale, said grain elevator is nevertheless of substantial value to the public in that said elevator now stores and handles, has stored and handled, and may be expected to store and handle large quantities of grain for the public generally, for agencies and instrumentalities of the United States government, as well as for Cargill. Said grain elevator is a facility of considerable size, having a capacity in excess of four million bushels. For the foregoing reasons, Cargill represents that the proposed lease of said prop- [fol. 82] erty to Cargill is in the public interest, in that it will permit the continued operation of the facility as a public grain storage and handling plant. It is Cargill's intention to continue the operation of said elevator property

as a public licensed warehouse and to continue to render the same service to the public as heretofore.

Wherefore, Your Petitioner respectfully requests this Commission to enter its order herein, consenting to and approving:

1. The sale and conveyance by Cargill of the aforesaid property and of all right, title and interest of Cargill in and to said easements to Cahokia Elevator Co., upon the terms and conditions set out in Exhibit "1" hereto attached, and

2. The lease by Cargill of said property from said Cahokia Elevator Co. upon the terms and conditions set out in Exhibit "4" hereto attached, and

3. The doing of all acts and things by Cargill and said Cahokia Elevator Co. necessary to carry out and consummate said proposed purchase, sale and lease.

Dated: December 12, 1944.

Cargill, Incorporated, (Signed) by John H. MacMillan, Jr., President; (S.) Albert G. Egermayer, Secretary.

STATE OF MINNESOTA,
County of Hennepin, ss:

John H. MacMillan, Jr. and Albert G. Egermayer, each being first duly sworn, on oath depose and say that they are, respectively, the President and Secretary of the Petitioner named in the foregoing Petition; that they are authorized to make this affidavit and verification in behalf of said Petitioner; that they have read the foregoing Petition and know the contents thereof, and that the same is true to the best of their knowledge and belief.

(Signed) John H. MacMillan, Jr., Albert G. Egermayer.

Subscribed and sworn to before me this 12th day of December, 1944. (Signed) Bessie L. Harman, Notary Public. My Commission Expires Oct. 5th, 1951. (Notarial Seal.)

[fol. 83] EXHIBIT 2

State of Illinois

Illinois Commerce Commission

(Caption—32523)

Order

By the Commission:

On the 15th day of December, 1944, pursuant to leave granted by the Commission, a hearing was had on a petition filed instanter by Cargill, Inc., a Delaware Corporation (hereinafter sometimes called "Cargill"), praying therein for an order by the Commission consenting to and approving the sale and conveyance by said Cargill, Inc. of a certain grain elevator and certain adjoining lands and easements situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as "Cargill East St. Louis Elevator 'R' ", all of which is more particularly described in exhibits attached to the aforesaid verified petition. Upon leave granted Cahokia Elevator Company, a Delaware Corporation (hereinafter sometimes called "Cahokia"), the purchaser of the premises hereinbefore mentioned, filed a concurring verified petition in this case praying therein for an order by this Commission consenting to and approving a lease of the premises hereinbefore mentioned by said Cahokia Elevator Company to Cargill, Inc., a copy of which is marked Exhibit 4 and attached to the verified petition filed by Cargill, Inc. in this case on the 15th day of December, 1944.

It appears from the record in this case that all of the terms and conditions of the transaction whereunder Cargill, Inc. secured an interest in the premises hereinbefore mentioned from the Alton and Southern Railroad have been approved by this Commission in case bearing Illinois Commerce Commission docket No. 29012 under orders entered dated July 25, 1940, June 3, 1941, and January 6, 1942, and that the unpaid balance of $325,000.00 of the original purchase price will be paid to the said Alton and Southern Railroad prior to the conveyance of the premises in question by Cargill, Inc. to Cahokia Elevator Company.

[fol. 84] It further appears that Cargill, Inc. now proposes to sell the said premises to Cahokia Elevator Com-

pany, a Delaware Corporation, for $500,000.00; that the said purchase price was the best price petitioner could obtain for the premises in question following a procedure of competitive bidding; that petitioner offered for sale the property publicly by a solicitation of bids published in the following publications on the dates indicated:

Publication	Publication Dates
Chicago Journal of Commerce (Financial—commercial daily)	November 1, 7 and 10, 1944.
The Northwestern Miller (Weekly trade journal)	October 18 and 25, and November 1, 1944.
The Southwestern Miller (Weekly trade journal)	October 17, 24 and 31, 1944.
The National Grain Journal (Monthly trade journal)	October, 1944 issue.
The Grain & Feed Review (Monthly trade journal)	November, 1944 issue.
St. Clair County Record (Weekly legal newspaper)	October 27, 1944.

It further appears that Cargill, Inc. proposes to lease the premises in question from Cahokia Elevator Company for a term of ten (10) years commencing December 30, 1944, at and for an agreed cash rental of $65,000.00 per annum, payable in equal quarterly installments of $16,250.00, the first of which installments is to become payable on December 30, 1944; that the lessee is to pay all taxes and assessments, both general and special, levied upon or assessed against the property in question for the years 1945 to 1954, both inclusive, and to pay for fire and extended coverage insurance on the said premises in the amount of $500,000.00, or such maximum lesser amount equal to the appraised replacement value of the improvements, machinery and equipment constituting a part of said property.

It further appears that the proposed sale and lease of the premises in question will improve the cash position of Cargill, Inc., and thus aid it in its borrowing from banks in the conduct of its business as a grain dealer and a public grain warehouseman; that the consummation of the proposed sale and lease will not adversely affect the public [fol. 85] service in that Cargill, Inc. proposes to carry on its public warehouse business under the proposed lease as at present under its ownership of the premises in question

without interference to the public in so far as the movement of grain in and out of said elevator property is concerned.

It further appears that Cargill, Inc. acknowledges that the consent and approval by the Commission of the reasonableness of the rental to be paid by Cargill, Inc. under the proposed lease would not be deemed or construed by said Cargill to be a conclusive finding of fact binding upon the Commission in any controversy involving the reasonableness of the rates charged by Cargill for the storage of grain upon the premises involved herein.

The Commission having considered the evidence, both oral and documentary, adduced at the aforesaid hearing in this case, the verified petition filed by Cargill, Inc. and the concurring petition filed by Cahokia Elevator Company, as well as certain instruments attached to the said verified petition, is of the opinion and finds:

(1) that Cargill, Incorporated now operates, and since January 10, 1942, has operated, all or a part of said grain elevator as a licensed public grain warehouse under the United States Warehouse Act, and is defined as a public utility in Section 10 of the Illinois Public Utilities Act;

(2) that this Commission has jurisdiction of the parties to this proceeding and of the subject matter hereinunder consideration;

(3) that Cargill, Incorporated is the owner of the premises hereinbefore referred to and more particularly described in certain instruments attached to the verified petition filed in this case by Cargill, Incorporated, and that the sale and conveyance of said premises, as proposed in this case, will not interfere with the operation of said Cargill, Incorporated in the conduct of its grain warehousing business or with its duties to the public, if any, in the conduct of such grain warehousing business;

(4) that the consideration for the proposed sale and conveyance of the premises as aforesaid is $500,000.00, which sum, under the method of sale used by said Cargill, Incorporated, indicates the present fair cash market value of the said premises in question;

(5) that the Commission should consent to and approve the sale and conveyance of the real property and improve-
[fol. 86] ments specified in the aforesaid verified petition,

as well as all right, title and interest of Cargill, Incorporated, in and to the aforesaid easements, all in accordance with the offer and acceptance documents filed in this case, to Cahokia Elevator Company upon the terms and conditions set forth in the said exhibits attached to the aforesaid verified petition and filed in this case;

(6) that the consent and approval by the Commission of the sale and lease hereinunder consideration should not be deemed or construed by the parties hereto to be binding upon the Commission in any controversy before the Commission involving rates for the storage of grain;

(7) that the Commission should consent to and approve the lease by Cahokia Elevator Company to Cargill, Incorporated of the aforesaid premises.

It Is Therefore Ordered by the Illinois Commerce Commission that Cargill, Incorporated be, and it is hereby, authorized to sell and convey to Cahokia Elevator Company, a certain grain elevator and certain adjoining lands and easements situated in the Town of Centerville, near the City of East St. Louis, in St. Clair County, Illinois, and commonly known as "Cargill East St. Louis Elevator 'R' ", and more particularly described in an exhibit attached to the verified petition filed in this case on the 15th day of December, 1944, and to receive therefor the sum of Five Hundred Thousand Dollars ($500,000.00), and that said sale and conveyance be, and the same is hereby, consented to and approved.

It Is Further Ordered that the Commission hereby consents to and approves the lease of the premises hereinbefore referred to by Cahokia Elevator Company to Cargill, Incorporated, upon the terms and conditions set forth in a copy of said lease and other instruments filed in the record of this case.

It Is Further Ordered that Cargill, Incorporated and Cahokia Elevator Company be, and they are hereby, authorized to execute all instruments and perform all acts necessary to give effect to the transactions covered by this order, and that the execution of all of said instruments and the performance of all of said acts be, and the same are hereby, consented to and approved.

By order of the Commission at Chicago, Illinois, this 28th day of December, 1944.

(Signed) Joseph F. Gubbins, Secretary. (Seal.)

[fol. 87] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CARL A. SORLING—Filed March 5, 1945

STATE OF ILLINOIS,
County of Sangamon, ss:

Carl A. Sorling, being first duly sworn, on oath deposes and says:

1. That he is a resident of the City of Springfield in the County and State aforesaid and a practicing member of the bar of said state.

2. That he is familiar with the proceedings before the Illinois Commerce Commission in Docket No. 32,523 "In the Matter of the Application of Cargill, Incorporated, for Consent to and Approval of the Sale of a certain Grain Elevator in the Town of Centerville, St. Clair County, Illinois", and that he represented Cahokia Elevator Co., the proposed buyer of the premises, in that proceeding.

3. That in the contract of sale respecting the said elevator premises this affiant insisted upon the inclusion therein of an obligation on the part of the seller, Cargill, Incorporated, to secure the consent of Illinois Commerce Commission to the proposed sale, and that he insisted upon such inclusion because the contract of sale required that the seller deliver to the buyer a certificate of title, to be issued by St. Clair Guaranty and Title Co., of East St. Louis, Illinois, and this affiant was aware of the practice of Illinois title guaranty companies to require Illinois Commerce Commission approval of sales of real property by any utility.

4. That in the course of the discussion between this affiant and Albert G. Egermayer, secretary of, and counsel for, the seller, it was stated by Mr. Egermayer that the seller held a federal license for the operation of the elevator in question and that litigation was pending in the United States District Court at Chicago, Illinois upon the question as to whether Illinois Commerce Commission had any jurisdiction in the premises, but inasmuch as it was desired to consummate the purchase of the property before December 30, 1944, this affiant could not await the settlement of the controverted question, and, therefore, continued to insist upon the insertion in the contract of the requirement that

[fol. 88] the seller secure the consent of Illinois Commerce Commission to the transaction.

5. This affidavit is made by the undersigned in the knowledge that it is intended for use in support of a motion for a temporary injunction in the cause of "Great Lakes Elevator Corporation, et al., *vs.* Illinois Commerce Commission, et al., pending in the District Court of the United States, Northern District of Illinois, Eastern Division, as Civil Action No. 44 C 1257.

Carl A. Sorling.

Subscribed and sworn to before me this 16th day of February, A. D. 1945. Helen Marx, Notary Public. (Seal.)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 44 C 1253

BOARD OF TRADE OF CITY OF CHICAGO

vs.

ILLINOIS COMMERCE COMMISSION, et al.

Civil Action No. 44 C 1257

GREAT LAKES ELEVATOR CORPORATION, et al.,

vs.

ILLINOIS COMMERCE COMMISSION, et al.

MEMORANDUM OPINION—Filed June 15, 1945

In No. 1257 plaintiffs who are licensed warehousemen under the United States Warehouse Act seek to enjoin the Illinois Commerce Commission from hearing a complaint which charges plaintiffs with acts in violation of the con- [fol. 89] stitution and regulatory statutes of Illinois. The Commission overruled a motion to dismiss, and set the case for hearing. Plaintiffs contend that the Illinois constitutional and statutory provisions have been so completely superseded by the Federal Act that the Commission may not even hold a hearing, and even though the Commission after the hearing may not take any action in conflict with

the authority conferred upon the Secretary of Agriculture by the Federal law.

In No. 1253, plaintiff relies upon the Commodities Exchange Act as superseding the authority of the Commission.

In order to sustain the injunctions prayed for the court must decide that the Federal Law has completely extinguished State investigation and regulation in the entire field in which the Commission has annouced its intention to hold a hearing.

The State of Illinois has enacted the Illinois Grain Warehouse Act. By its Public Utilities Act of 1913 and subsequent acts, public warehouses for the storage of grain are public utilities and are subject to the comprehensive regulatory provisions of that law, including court review. Control over such warehouses has been exercised by most of the States. The Supreme Court of the United States has decided that regulation of such warehouses engaged in interstate commerce does not amount to regulation of such commerce, in the absence of conflict with Federal legislation.

The Federal Warehouse Act of 1916 does not purport to be a utility regulatory act. It is aimed at fraudulent practices in connection with warehouse receipts for agricultural products which are stored for interstate commerce. Its provisions are applicable only to those who seek and obtain a government license. The act does not provide a method for establishment of just and reasonable rates or the elimination of discriminatory practices. The only remedy under that act is revocation of the license. The act does not impair or limit the effect of any State law relating to warehouse or warehousemen.

Amendments to that act have not changed it materially. The 1931 amendment does not add to it any of the regulatory provisions usually found in regulatory statutes. It does not fix standards, require findings, or provide for judicial review. The amendment to section 29 does not in my opinion transform the statute into a comprehensive [fol. 90] Federal plan for the regulation of these licensed utilities, and does not operate to supersede the provisions of the Illinois law so completely that the Commission may not even make an investigation of any of the matters covered by the complaint before it.

I recognize that this is a field in which widely different views have been expressed, but the rule which seems to me

to be applicable is that it must clearly appear that the Federal provisions are inconsistent with those of the State. The amendment does not say that State officials may not proceed under State laws without the approval of the Secretary; on the contrary, it authorizes the Secretary in his discretion to cooperate with the State officials. Congress has not provided a substitute for the regulatory statutes of the State. The Secretary has not been authorized to prescribe rates; the penalties were not extended to cover discriminatory practices, and the Secretary can only revoke the license. That official is given no direct authority over the financial transactions and security issues of the licensee. There is no safeguard against improper abandonment of the public service. There are no provisions for complaints, hearings, findings, and court review. In all material respects, the powers of the Secretary are just as they were before the amendment of section 29. Forfeiture of the license gives only negative protection to the public. The State can still fix reasonable rates and prevent discriminatory rates and protect against improper financial transactions and security issues. In my opinion, there is no direct conflict between a licensing system to protect against fraudulent warehouse receipts, and utility regulation to preserve the service in the public interest, and it does not clearly appear that the State law has been completely superseded as to all of the matters covered by the complaint. The same principles apply to the suit based upon the Commodities Exchange Act.

Orders and findings may be presented denying the injunctions.

Michael L. Igoe, Judge United States District Court.

Dated, June 15th, 1945.

[fol. 91] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action. No. 44 C 1257. Equitable Relief Sought

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants

JUDGMENT—June 26, 1945

This cause coming on to be heard on the verified complaint of the plaintiff herein, and the verified answers of Daniel F. Rice, Joseph J. Rice, Walter T. Rice and William F. Rowley, doing business as Daniel F. Rice & Company, a partnership, defendants herein, and upon the motion of defendants, the Illinois Commerce Commission and its Chairman, John D. Biggs, and William Parrillo, Frank Peska, Edwin A. Rosenstone and Val J. Washington, members of said commission, and George F. Barrett, Attorney General of the State of Illinois, to strike the plaintiffs' complaint and dismiss the cause, and upon the affidavits in support of said complaint filed herein by the plaintiffs, and upon the affidavits filed by the defendants herein, and upon the motion of plaintiffs for an injunction in accordance with the plaintiffs' complaint, and upon the verified answers of the defendants to said motion, the court being fully advised in the premises, and having heard the arguments of counsel, and having considered the briefs filed by the parties herein and by the War Food Administrator, United States Department of Agriculture, as amicus curiae, and the court having rendered its memorandum opinion which [fol. 92] is attached hereto and made a part hereof, does hereby find:

1. The facts and law applicable thereto to be as contained in the memorandum of opinion attached hereto.

2. Plaintiffs are public utilities within the meaning of and subject to the Illinois Public Utility Act.

3. Plaintiffs possess federal licenses issued pursuant to the provisions of the United States Warehouse Act, as amended.

4. The United States Warehouse Act, as amended, is not a utility regulatory act, but is a limited and circumscribed

exercise of federal control over warehousemen who voluntarily seek and obtain a federal license.

5. The United States Warehouse Act, as amended, does not authorize the Secretary of Agriculture to:

(a) Fix or establish just and reasonable storage rates and charges for public storage of grain.

(b) Prevent discriminatory rates and practices of grain warehousemen.

(c) Prevent the abandonment of public grain warehousing service and capacity.

(d) Approve or disapprove financial transactions, or the issuance of securities.

As to such specific subject matters of regulation, the field is not occupied by the federal government; the provisions of the laws and statutes of the State of Illinois with respect thereto are not superseded; and the jurisdiction of the Illinois Commerce Commission over plaintiffs with respect thereto is not preempted or superseded by the United States Warehouse Act, as amended, but such regulation exists as a valid exercise of state authority.

6. The jurisdiction of the Illinois Commerce Commission over plaintiffs is not preempted or superseded by the United States Warehouse Act, as amended, with respect to the matters and issues involved in the complaint of *Daniel F. Rice & Co.* v. *Chicago Grain Corp., et al.*, Illinois Commerce Commission Docket No. 32267.

7. Plaintiffs are subject to the jurisdiction of the Illinois Commerce Commission and the comprehensive regulatory provisions of the Illinois Public Utility Act and the laws and statutes of the State of Illinois.

[fol. 93] 8. The equities involved herein are against the plaintiffs and in favor of the defendants, and the relief prayed by the plaintiffs herein should be denied.

It Is Therefore Ordered, Adjudged and Decreed that the injunction and the relief prayed for by plaintiffs herein be and the same are hereby denied.

It Is Further Ordered, Adjudged and Decreed that the motion of the defendants filed herein to strike plaintiffs'

complaint and dismiss the cause be and the same is hereby sustained.

It Is Further Ordered, Adjudged and Decreed that the above entitled cause be and the same is hereby dismissed at the cost of plaintiffs.

Enter: Igoe, Judge.

Dated: June 26, 1945.

(Memorandum Opinion attached but not copied.)

In the District Court of the United States

* * (Caption—44-C-1257) * *

Notice of Appeal—Filed July 9, 1945.

Notice is hereby given that Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros. and Cargill, Inc., plaintiffs in the above entitled case, jointly and severally hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from judgment entered in this cause June 26, 1945, denying the Writ of Injunction and other relief prayed by plaintiffs in their complaint, as amended, and sustaining [fol. 94] the motion of the defendants to strike the complaint and to dismiss the cause and dismissing the cause at the cost of plaintiffs.

Dated July 9, 1945.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, by Ferre C. Watkins, Their Attorney; Continental Grain Company, by Floyd E. Thompson, One of Its Attorneys; Rosenbaum Bros., Cargill, Inc., by Leo F. Tierney, One of Their Attorneys.

Ferre C. Watkins, 135 South LaSalle St., Chicago; Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Poppenhusen, Johnston, Thompson & Raymond, 11 South LaSalle St., Chicago; Leo F. Tierney, Frank W. Sullivan, Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago.

(Attached hereto is the following certificate:)

[fol. 95] Certificate of Mailing

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 10th day of July, 1945, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

George F. Barrett, Attorney General, 208 South La Salle Street, Chicago, Illinois; Irvin Rooks and Lee A. Freeman, 135 South La Salle Street, Chicago, Illinois.

Roy H. Johnson, Clerk. (Seal.)

In the District Court of the United States

* * (Caption—44-C-1257) * *

Statement of Points on Which Plaintiffs Intend to Rely on Their Appeal—Filed July 9, 1945

Plaintiffs, Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, Continental Grain Company, Rosenbaum Bros., and Cargill, Inc., intend to rely on their appeal on the following points:

1. The Court erred in granting the motion of defendants to strike the complaint and to dismiss the cause of action.

[fol. 96] 2. The Court erred in dismissing the cause of action.

3. The Court erred in denying the writ of injunction as prayed in the complaint.

4. The Court erred in holding that the United States Warehouse Act (7 U. S. C., Sec. 241, et seq.) and the regulations promulgated pursuant thereto do not regulate the business of public grain warehousemen licensed under said Act.

5. The Court erred in refusing to hold that the field of regulating the business of public grain warehousemen licensed under the United States Warehouse Act is not occupied by the Government of the United States and that the laws of the State of Illinois respecting the regulation of public grain warehousemen are not superseded by said Act.

6. The Court erred in holding that Illinois Commerce Commission has jurisdiction to regulate charges for public storage of grain by public grain warehousemen licensed under the United States Warehouse Act.

7. The Court erred in holding that Illinois Commerce Commission had jurisdiction to regulate the practices of public grain warehousemen licensed under the United States Warehouse Act.

8. The Court erred in holding that the United States Warehouse Act does not supersede the law of Illinois which makes it illegal for a public grain warehouseman to store his own grain in a public grain warehouse operated by him.

9. The Court erred in holding that Illinois Commerce Commission had jurisdiction to proceed under the complaint filed with it by defendants Daniel F. Rice and others July 28, 1944.

10. The Court erred in refusing to hold void the order of Illinois Commerce Commission entered October 10, 1944, denying the motion of plaintiffs herein to dismiss the complaint pending before the Commission and ordering the hearing on said complaint to proceed.

11. The Court erred in refusing to hold void the order of Illinois Commerce Commission entered October 10, 1944, denying the alternative motion of plaintiffs herein to strike the complaint pending before the Commission and each paragraph thereof, and more particularly paragraphs 3, 7, 8, 9, 9(a), 9(b), 9(c), 9(d), 9(e), 10, 11, 12, 13, 13(a), 13(b), 13(c), 13(d), 13(e), 13(f), 13(g), 13(h), 13(i), 14, 15 and [fol. 97] 16 of said complaint, for lack of jurisdiction in said Commission to entertain the complaint and the various specifications in the separate paragraphs thereof.

12. The Court erred in refusing to hold that the subject matter of the complaint filed with Illinois Commerce

Commission by Daniel F. Rice and others July 28, 1944, is beyond the jurisdiction of such Commission and is exclusively within the jurisdiction of the Government of the United States under the United States Warehouse Act by reason of paragraph 3, section 8, of Article I of the Constitution of the United States.

13. The Court erred in denying the relief prayed in the complaint herein.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, by Ferre C. Watkins, Their Attorney. Continental Grain Company, by Floyd E. Thompson, One of its Attorneys. Rosenbaum Bros., Cargill, Inc., by Frank W. Sullivan, One of their Attorneys.

Ferre C. Watkins, 135 South LaSalle St., Chicago. Floyd E. Thompson, Frederick Mayer, A. L. Rittenberg, Poppenhusen, Johnston, Thompson & Raymond, 11 South LaSalle St., Chicago. Leo F. Tierney, Frank W. Sullivan, Mayer, Meyer, Austrian & Platt, 231 South LaSalle St., Chicago.

[fol. 98] Bond on appeal for $250.00 filed July 10, 1945, omitted in printing.

[fol. 99] In the District Court of the United States

* * (Caption—44-C-1257) * *

Stipulation as to the Record—Filed July 9, 1945

To Roy H. Johnson, Clerk of said Court:

The undersigned attorneys of record for the parties in the above entitled cause stipulate that the following items constitute a complete record of all of the proceedings had [fol. 100] and of all the evidence heard in the District Court in the above entitled matter, and request you to make a transcript of the items designated below to be filed as the record on appeal in the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the notice of appeal this day filed with you by the plaintiffs:

1. Placita.

2. Complaint filed October 20, 1944, with affidavit and exhibits attached.

3. Notice and motion for preliminary injunction filed October 23, 1944.

4. Appearance of defendants, Illinois Commerce Commission and members thereof and Attorney General, filed November 1, 1944.

5. Appearance of defendants, Daniel F. Rice and others, filed November 8, 1944.

6. Answer of Illinois Commerce Commission and others to motion for preliminary injunction filed December 28, 1944.

7. Motion of Illinois Commerce Commission and others to strike the complaint and dismiss the case filed December 28, 1944.

8. Answer of Daniel F. Rice and others, filed December 30, 1944.

9. Motion of plaintiffs for leave to file amendment to complaint and that plaintiffs' motion for preliminary injunction be heard upon the complaint as amended, filed February 19, 1945.

10. Order granting said motion, entered February 19, 1945.

11. Amendment to complaint with affidavits attached, filed February 19, 1945.

12. Motion of plaintiffs for leave to file affidavits in support of motion for preliminary injunction, filed February 26, 1945.

13. Order granting said motion, entered February 26, 1945.

14. Affidavits in support of motion for preliminary injunction, filed by plaintiffs February 26, 1945.

15. Affidavit on behalf of Illinois Commerce Commission and others, filed March 2, 1945.

16. Affidavit of Carl A. Sorling, filed March 5, 1945.

17. Memorandum opinion of Judge Michael Igoe, filed June 15, 1945.

[fol. 101] 18. Judgment denying injunction, sustaining motion to strike and dismissing case, entered June 26, 1945.

19. Notice of appeal, filed July 9, 1945.

20. Points relied upon for reversal, filed July 9, 1945.

21. Stipulation as to record, filed July 9, 1945.

22. Bond on appeal, filed July 9, 1945.
23. Clerk's certificate.

Dated July 9, 1945.

Great Lakes Elevator Corporation, Santa Fe Elevator Corporation, Norris Grain Company, Stratton Grain Company, By Ferre C. Watkins, *Their Attorney.*

Continental Grain Company, By Floyd E. Thompson, *One of its Attorneys.*

Rosenbaum Bros., Cargill, Inc., by Frank W. Sullivan, *One of its Attorneys.*

Illinois Commerce Commission, and John D. Biggs, William Farrillo, Frank Peska, Edwin A. Rosenstone, Val J. Washington, *Commissioners.* By George F. Barrett, *Attorney General of Illinois.* Albert J. Meserow, *Assistant Attorney General.*

Daniel F. Rice, Joseph J. Rice, Walter T. Rice, William F. Rowley, By Irvin Rooks, Lee A. Freeman, *Their Attorneys.*

George F. Barrett, *as Attorney General of Illinois,* George F. Barrett.

[fol. 102] Clerk's Certificate to foregoing transcript omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER—August 9, 1945

It is ordered that the stipulation of counsel relative to printing the transcript of record be, and the same is hereby, approved.

[fols. 103-104] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 105] Placita omitted.

In United States Circuit Court of Appeals, Seventh Circuit

Before: Hon. J. Earl Major, Circuit Judge. Hon. Otto Kerner, Circuit Judge. Hon. Charles G. Briggle, District Judge.

8898

Great Lakes Elevator Corporation, et al., Plaintiffs-Appellants,

vs.

Illinois Commerce Commission, et al., Defendants-Appellees

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Order—May 8, 1946

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Leo F. Tierney, Mr. Ferre C. Watkins and Mr. Floyd E. Thompson, counsel for appellant, and by Mr. Lee A. Freeman and Mr. William C. Wines, counsel for appellees, and the Court takes this matter under advisement.

[fol. 106] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OCTOBER TERM, 1945, APRIL SESSION, 1946

8897

BOARD OF TRADE OF THE CITY OF CHICAGO, a Corporation, Plaintiff-Appellant,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees

8898

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs-Appellants,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees

Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before MAJOR and KERNER, *Circuit Judges*, and BRIGGLE, *District Judge*.

OPINION—Filed June 7, 1946

MAJOR, *Circuit Judge*. These are separate appeals from an order of the District Court, entered June 26, 1945, denying plaintiffs an injunction and sustaining defendants' motion to strike plaintiffs' complaint, and dismissing their causes of action. The appellant in No. 8897 is the Board of Trade of the City of Chicago, and the appellants in No. [fol. 107] 8898 are operators of warehouses for the storage of grain located in Chicago, Illinois. The latter have been licensed by the Secretary of Agriculture of the United States (hereinafter referred to as the Secretary), pursuant to the United States Warehouse Act (7 U. S. C. A. § 241, *et seq.*) (hereinafter referred to as the Warehouse Act). The appellees in both appeals are the Illinois Commerce Commission, the members of such Commission, Daniel F. Rice & Company and the Attorney General of Illinois.

While separate briefs and arguments have been submitted to this court in behalf of the parties in each appeal, the questions for decision are of a kindred nature and we are of the view that both appeals may be appropriately considered and disposed of in the same opinion.

On July 28, 1944, Daniel F. Rice & Company (hereinafter referred to as Rice) caused to be filed before the Illinois Commerce Commission (hereinafter referred to as the Commission) their complaint against the appellants in Nos. 8897 and 8898, alleging violations of the Public Utility Act and the Illinois Grain Warehouse Act of the State of Illinois. Subsequently, there was filed before the Commission separate motions by the Board of Trade and by the warehousemen to dismiss such proceeding on the ground that the Commission was without jurisdiction. On October 10, 1944, the Commission, after consideration of briefs and oral argument, entered its order denying the motions to dismiss the Rice complaint and setting the cause for hearing on October 24, 1944.

Thereupon, the Board of Trade and the warehousemen filed in the District Court separate complaints for the purpose of enjoining the Rice defendants from the further prosecution of their proceeding before the Commission, of enjoining the Commission from entertaining further jurisdiction of said matter and the Attorney General of the State of Illinois from instituting any proceeding against the instant plaintiffs for the purpose of enforcing any order of the Commission in the case now pending before it. Motions to dismiss each of the complaints were interposed. The two causes were consolidated for hearing in the court below, and such motions to dismiss were allowed in a single order. As stated, there are two appeals from this order, one in No. 8897 and the other in No. 8898.

The contested issues in these appeals are predicated upon a similar pattern. While stated by the respective [fol. 108] parties in somewhat different phraseology, the essential question for decision on the merits is whether the federal government has by legislation so occupied and pre-empted the field of regulation of the Board of Trade in one appeal and the warehousemen in the other as to deprive the Commission of authority to grant the relief and therefore to regulate in the manner prayed for by Rice. In contending that the federal government has so occupied and pre-empted the field, the Board of Trade (appellant in No.

8897) relies upon the Commodity Exchange Act (7 U. S. C. A. §1 *et seq.*), and the warehousemen (appellants in No. 8898) rely upon the Warehouse Act (7 U. S. C. A. § 241, *et seq.*). While these legislative enactments are separate and distinct, they are as applied to the facts of this case somewhat dependent upon each other, as will be hereinafter disclosed. Another issue raised by the Attorney General of Illinois is that the court below was without jurisdiction to hear and decide the questions presented.

We shall first consider the appeal by the warehousemen (No. 8898). In so doing, it appears desirable to relate further the facts as alleged in the complaint. Jurisdiction was alleged because the controversy arose under the laws of the United States, more particularly under the Warehouse Act, together with the regulations promulgated thereunder, and also by reason of Article I, Section 8, Clause 3 of the United States Constitution. It was alleged that each of the plaintiffs was engaged in the public storage of grain for hire for interstate commerce under a license duly issued by the Secretary, pursuant to the Warehouse Act, and under a schedule of rates, charges and practices duly filed with the said Secretary, as required by law, and that each of said plaintiffs as a holder of such license was subject to said Warehouse Act and the rules and regulations duly promulgated thereunder. Each of the plaintiffs, except Great Lakes Elevator Corporation, dealt in grain, both on its own account and as agent for others.

The grain market at Chicago is the world's largest grain market. For the year ending December 31, 1943, approximately two billion bushels of grain were shipped into and out of that market both by rail and water, from and to states other than Illinois. Over 90% of the trade in grain futures contracts in the United States was transacted at the said market on the said Board of Trade, a corporation which has been designated a contract market by the Secre- [fol. 109] tary under the Commodity Exchange Act. Under that Act futures contracts on the Board of Trade and other contract markets may be satisfied by offsetting settlements between the contracting parties, by delivery in kind of the grain involved in the contract, or by the delivery of valid negotiable warehouse receipts of certain characteristics, including receipts issued under the Warehouse Act. The warehouse receipts issued to plaintiffs were issued under, and complied in all respects with the Warehouse

Act, and were in general use upon the said Board of Trade in satisfaction of futures contracts on the interstate market, and as such were instruments of interstate commerce.

Then follows a review of the proceedings initiated by Rice before the Commission, plaintiffs' motions to dismiss and the action of the Commission thereon, as heretofore related and which need not be further detailed at this point. It was alleged that each of the plaintiffs, except Great Lakes Elevator Corporation, did business as an owner and merchandiser of grain and regularly stored, for interstate commerce, grain owned by it as well as that of others, in its warehouse or warehouses; that this right was permitted by the Warehouse Act and regulations, but that under the Constitution of the State of Illinois as construed by the Illinois Supreme Court it was illegal for a public warehouseman to store his own grain in a public warehouse operated by him. It was alleged that plaintiffs issued to themselves negotiable warehouse receipts for grain, in form prescribed by the Warehouse Act, representing in the aggregate many millions of dollars annually, and that such receipts represent the grain belonging to the owners of such warehouses. Such receipts were used by plaintiffs for the purpose of transferring title to such grain in sales to others and also as collateral for commercial loans obtained from banks. Such receipts were also used by others for a similar purpose. Many of such warehouse receipts were alleged to be outstanding and pledged as collateral for such loans. It was alleged that an application of the Illinois law would make the storing of such grain illegal and would destroy and seriously impair the value of such warehouse receipts in commercial transactions.

It was alleged that a hearing by the Commission on the Rice complaint would have the immediate effect of creating a cloud upon such warehouse receipts outstanding or to be issued and that plaintiffs as well as the public would be [fol. 110] subjected as a result to irreparable damages. It was further alleged that plaintiffs were subject to fine and imprisonment for failure to take out a state license under the Illinois law, and that the Commission by its refusal to dismiss the Rice complaint has decided that plaintiffs are subject to the laws of the State of Illinois and the penalties provided for violations thereof.

Each of the plaintiffs filed an affidavit in support of the motion for preliminary injunction, disclosing in detail the

national scope of its business. These affidavits show the amount of grain in bushels and value shipped and received by such warehouses from states other than Illinois. (We see no occasion to detail such information inasmuch as no question is here raised but that plaintiffs were engaged in interstate commerce.) The affidavits recite the issuance by each of the plaintiffs of warehouse receipts on forms furnished by the Department of Agriculture, which state on their face that the grain received by each warehouseman was "for storage in the course of interstate or foreign commerce." For the purpose of showing the value of the federal licenses held by plaintiffs, the amount of grain for a designated period stored in each warehouse, including that owned by the warehouseman against which receipts were outstanding, was disclosed. The affidavits further show that each of the plaintiffs has filed with the Secretary schedules of rates and charges for the storage and handling of grain, and that each is regularly inspected and examined by representatives of the United States Department of Agriculture. It was further disclosed by the affidavits the amount of grain stored by the United States government during a designated period in each of the warehouses operated by plaintiffs. We see no reason to state the amount disclosed as to each warehouse. It is sufficient to state the amount was large; for instance, that stored by the Santa Fe elevator for a twelve month period was 4,663,469 bushels.

The Attorney General, on behalf of himself and the Commission, raises the question that the lower court was without jurisdiction to entertain the complaint, contending that the suit was one requiring the convocation of a three-judge court, under § 266 of the Judicial Code (28 U. S. C. A. § 380), that the suit was inhibited by the Johnson Act (§ 24 (1) of the Judicial Code, 28 U. S. C. A. § 41 (1), as amended in 1934), and that interstate commerce was not involved. While Rice made the same contention before the District [fol. 111] Court, they have not raised the question here. The position of the Attorney General is predicated upon the erroneous premise, so we think, that plaintiffs by their bill sought to invalidate a state law as being in conflict with the federal Constitution or an enactment of Congress. The case was tried below and is presented here solely on the theory that the state law in question was superseded and rendered inoperative by federal enactment which has "pre-empted" the field in controversy. If the plaintiffs

had succeeded below or if they succeed in this court, it would not mean that any provision of the Illinois law or Constitution has been invalidated. It would only mean that such law or constitutional provision is inapplicable to a situation such as the instant one.

§ 266 of the Judicial Code must be complied with only where the injunction is sought "upon the ground of the unconstitutionality of such statute," and § 24 (1) of the Judicial Code inhibits a federal court from taking jurisdiction where it is sought to enjoin the action of an administrative board, etc., where jurisdiction is based "solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States." It appears evident that neither of these provisions is controlling. Moreover, in the recent case of *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, the complaint alleged, as in the instant case, that the federal statute preempted and occupied the field so as to deprive the state agency of jurisdiction. The case was heard by a single judge. The jurisdictional question was raised in the Court of Appeals, 116 F. 2d 227, 230, wherein the court stated: "The suit was not one for three judges. It did not attack the constitutionality of the Alabama statutes, it affirmed their constitutionality." The Supreme Court (315 U. S. 148) decided the case on its merits without reference to the jurisdictional question. See also *Ex Parte Bransford*, 310 U. S. 354, 358; *Ex Parte Buder*, 271 U. S. 461; and *Ex Parte Hobbs*, 280 U. S. 168. While other points argued by the Attorney General on the jurisdictional phase have been noted, we think they are without merit.

This brings us to a consideration of the case on the merits. No question is raised but that Congress had the authority to exercise all regulatory power over federally licensed warehouses to the exclusion of the state. In fact, such authority on the part of Congress is conceded. The [fol. 112] question is, did Congress by the Warehouse Act intend to occupy and pre-empt the field to the exclusion of state authority? That the question is a troublsome one is evidenced by the legion of cases in which it has been considered. A discussion of the numerous cases relied upon by the respective parties for the purpose of distinguishing or reconciling them would perhaps be futile and serve no useful purpose. Reference to a few of the latest Supreme Court opinions will suffice.

In *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761, 766, the court stated:

> "Congress, in enacting legislation within its constitutional authority over interstate commerce, will not be deemed to have intended to strike down a state statute designed to protect the health and safety of the public unless its purpose to do so is clearly manifested, (citing cases), or unless the state law, in terms or in its practical administration, conflicts with the Act of Congress, or plainly and palpably infringes its policy. (Citing cases)."

In *Hines* v. *Davidowitz*, 312 U. S. 52, 67, the court stated:

> "Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The case on its facts and questions decided most similar to the instant one is that of *Cloverleaf Butter Co.* v. *Patterson, supra.* The court (page 155) enumerates many cases in support of two propositions: (1) "Where this power to legislate exists, it often happens that there is only a partial exercise of that power by the federal government. In such cases the state may legislate freely upon those phases of the commerce which are left unregulated by the nation," and (2) "But where the United States exercises its power of legislation so as to conflict with a regulation of the state, either specifically or by implication, the state legislation becomes inoperative and the federal legislation exclusive in its application."

We think it is fair to conclude that plaintiff's contention in the instant matter is that this case falls within the second category, while defendants contend that it falls within the first. In other words, defendants appear to concede that [fol. 113] there has been a partial invasion of the field by the federal government but that a portion has been left open to the state, and included therein are those matters of which the Commission has assumed jurisdiction as a result of the Rice complaint.

Plaintiffs argue that Congress has specifically taken over all regulatory power concerning federally operated ware-

houses, or in the alternative, that it has done so by implication, and that exercise by the Commission of the matters before it "plainly and palpably infringes," the policy of Congress or presents an "obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The United States Warehouse Act was originally enacted in 1916. As thus enacted, Sec. 29 (7 U. S. C. A. Par. 269) provided:

> "* * * nothing in this Act shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen * * * but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this Act * * *."

In *Independent Gin & Warehouse Co.* v. *Dunwoody*, 40 F. 2d 1, the Court of Appeals for the Fifth Circuit, relying upon the provision just quoted, affirmed a decree of the District Court which had refused to enjoin the state officials of Alabama from enforcing certain state regulations applicable to warehouses. Shortly thereafter (in 1931), Congress amended § 29 to read as follows:

> "In the discretion of the Secretary of Agriculture he is authorized to cooperate with State officials charged with the enforcement of State laws relating to warehousemen, weighers, graders, inspectors, samplers or classifiers; but the power, jurisdiction and authority conferred upon the Secretary of Agriculture under this chapter shall be exclusive with respect to all persons securing a license hereunder so long as said license remains in effect. * * *"

A literal reading of this amended section furnishes strong support for plaintiffs' contention. Both the House Com- [fol. 114] mittee Report (H. Rept. 4, 71st Cong., 1st Sess., p. 4) and the Senate Committee Report (S. Rept. 1775, 71st Cong., 3rd Sess., p. 2) furnish further support to the theory that Congress by this amendment intended to eliminate the dual jurisdiction which had theretofore existed between the

federal and state governments as to federally operated warehouses. In a footnote we quote some of the more important statements contained in these reports.[1]

The only case of which we are aware wherein a court has considered the precise issue presented here is *In Re Farmers Cooperative Ass'n.*, 8 N. W. 2d 557, decided by the Supreme Court of South Dakota in 1943. The opinion discloses that the licensing feature, in fact the general provisions of the South Dakota law concerning warehouses, are quite similar to those in Illinois. Two questions were before the court: (1) did the warehousemen fall within the reach of the power granted to Congress by the commerce

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[1] In the House Report it was stated: "Under Section 29 * * * of the law as at present, if the Federal Act in any way conflicts with the State law, the Federal law becomes subservient to the State law in so far as there is a conflict. The result is that the Federal law can be negatived by State legislation. * * * To make the law accomplish the real purpose of Congress, it should be independent of any State legislation on the subject."

In the Senate Report it was stated: "Section 29 of the act now provides (quoting from Sec. 29). The effect of this wording is to make the Federal act subservient to State acts wherever there is a conflict. As might be expected there are conflicts between State laws and the Federal act. Since the law specifically makes the Federal act subservient to State laws in case of conflict, this feature militates against the full value of Federal warehouse receipts for collateral purposes. The amendment proposed to this section would make the Federal act independent of State laws. In other words, it would place the Federal act on its own bottom."

The Report referred to the permissive feature of the federal Act and stated: "* * * if it is decided to secure a license under the Federal act then the warehouseman would be authorized to operate without regard to State acts and be solely responsible to the Federal act. * * * In other words, it leaves it with the warehousemen to decide whether they wish to operate under the State or Federal law and having made their choice they shall then be permitted to operate without interference on the part of any agency."

clause of the Constitution? and (2) if so, did Congress intend to exert that power when it enacted the United States Warehouse Act? The first question, not involved in the instant case, was answered in the affirmative, notwithstanding the warehouse in question was local in character and not a part of interstate commerce. This conclusion was reached on the theory that the business of the warehouse affected interstate commerce. In an affirmative answer to [Fol. 115] the second proposition, the court, in denying the contention that the state and federal Acts were not in conflict, stated: "The collision between these acts is head on. It is but a question of which master the Cooperative must serve." The court then refers to § 29 as amended in 1931, and states:

> "We interpret this as a clear grant of discretionary power to the Secretary of Agriculture, to achieve the congressional aim either through cooperation with state officials in promoting state regulation, or by direct federal control. When the latter course is followed both by reason of the terms of the act, and the paramount nature of federal power, the federal control displaces state control."

In connection with this South Dakota decision, see *Bacon Grain Co.* v. *City of Chicago*, 325 Ill. App. 245, 253.

At the same time that Congress amended § 29 it also amended § 6 (7 U. S. C. A. Par. 247), which makes provision for the execution of a bond by warehousemen applying for a federal license. Prior to the amendment the section required a bond "to secure the faithful performance of his obligations as a warehouseman under the laws of the State, district or territory in which he is conducting such warehouse, as well as under the terms of this Act * * *." By the 1931 amendment the requirement that the bond be conditioned upon compliance with the laws of the state, district or territory in which the warehouse was conducting business was eliminated and it was only required that the bond be conditioned upon compliance with the federal act and federal regulations thereunder. Referring to this amendment, the Senate Committee Report (heretofore noted) stated: "* * * again this amendment to Section 6 naturally follows the amendment suggested to Section 29."

Another legislative expression of some significance is found in the Commodity Exchange Act (§ 5 (a), 7 U. S. C. A. Par. 7a (7)). This section makes it mandatory that receipts issued under the Warehouse Act be accepted in satisfaction of any futures contract without discrimination and "notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman under the laws of any State or enjoys other or different privileges than under State law."

In this connection it is pertinent and of some importance to note that in *Cloverleaf Butter Co.* v. *Patterson, supra,* [fol. 116] the court (page 155), cites in footnote 5 *Merchants Exchange* v. *Missouri,* 248 U. S. 365, 368, as one of the cases holding that the state was free to legislate upon matters left unregulated by the nation. True, the court in the *Merchants* case referred to § 29 of the Warehouse Act as manifesting the purpose of Congress not to supersede state laws. This reference, however, was made prior to the time § 29 was amended in 1931. More significant is that the court in the *Cloverleaf* case in footnote 6 (page 156) cites § 29 as an instance where Congress had specifically exercised its power of legislation so as to conflict with the regulation of the state, and that the federal legislation became exclusive in its application. The footnote reference was to § 29 as amended in 1931. Thus we have the court in the same opinion treating § 29 before it was amended as an illustration of dual authority and § 29 after it was amended as providing for sole authority in the federal government.

Defendants profess to discern from the language employed by Congress a purpose and intent to permit the states to share the control over federally licensed warehousemen. It is suggested that the language in § 29 as amended in 1931, by which the Secretary "is authorized to cooperate with state officials relating to warehousemen" recognizes such purpose. We think it more likely that Congress by this language recognized the existence of state laws over all warehouses even though they were instrumentalities of interstate commerce unless and until they had made application and obtained a license under the federal Act. If Congress intended to share with the states the control of the latter class of warehouses, it would seem that there was no real purpose for the amendments of 1931.

Defendants also made the point that the exclusive authority of the Secretary provided in § 29 is confined to that conferred "under this chapter," meaning the federal Warehouse Act. In connection with this point, much stress is placed upon a statement in *United States* v. *Hastings*, 296 U. S. 188, 199, wherein the court said with respect to amended § 29:

> "The amendment of 1931, with respect to conflict with the operation of state laws, does not militate against this limitation, for while the amendment asserts the exclusive authority of the Secretary of Agriculture, it has relation to the authority conferred by the Act * * *."

[fol. 117] The court there had before it the question of the sufficiency of an indictment which charged a theft from a federally licensed warehouse. The indictment was held bad for the reason that there was a failure to allege that the product stolen from the warehouse had been stored for interstate commerce, which the court held was essential to make the Federal act applicable. It was in this connection that the court made the statement just quoted. How this has any bearing upon the instant situation we are unable to discern. Evidently the Act in its relation to warehouses is limited to interstate commerce, and the Secretary's jurisdiction necessarily is confined to that field.

Defendants also stress the point that the obtaining of a license under the Act is permissive. We are unable to see how that affects the situation. It only means that the warehouseman may exercise an option as to whether he will operate under the state or federal law. When he exercises such option in favor of the latter, complies with its terms and has been issued a license, he is under the Act as definitely and certainly as though it was a mandatory requirement on his part. No vacuum is created, as defendants argue. Before he is issued a federal license he is under the control of the state, but after the federal license has been issued he is under the jurisdiction of the Secretary.

Defendants argue that the federal Act "in nature, form and intent is essentially a warehouse receipt Act" and that the purpose of its enactment was to establish "a warehouse receipt of respected value so that it would be accepted as collateral on loans." Whether the Act should be thus

narrowly construed is open to argument, although a study of its provisions together with the legislative history lends support to the contention. Assuming, however, that this theory is correct, we are of the view that it is of little if any benefit to defendants' position. The importance which Congress attached to warehouse receipts is illustrated by the numerous conditions required as a prerequisite to their issuance. (See 7 U. S. C. A. § 260.) From their very nature it is reasonable to conclude that Congress intended that the federal government take over all authority necessary to preserve their legality, negotiability, safety and value. This in itself required a broad field of control. It must be remembered that these receipts were issued against the grain stored in the warehouse and were conclusive evidence of ownership thereof. Exclusive jurisdiction over the receipts [fol. 118] having been conferred upon the Secretary, it seems unreasonable to conclude that he should be required to share with the state jurisdiction over the grain against which the receipts were issued and over the warehouses in which such grain was stored. The efficient handling and preservation of such grain in a warehouse suitable and properly adapted to its storage was highly essential if the Secretary was to discharge properly the responsibility placed upon him in connection with the receipts.

Assuming arguendo that the Secretary was not given express authority over the matters now before the Commission (charged in the Rice complaint), it seems that such authority was clearly implied. This view is strongly supported by the decision in *Cloverleaf Butter Co.* v. *Patterson, supra*, where the court sustained the authority of a federal agency to the exclusion of state authority. The product involved was butter. The federal agency was given express authority over the finished product known as renovated butter but not over packing house butter. It was held that express authority over the former carried with it implied authority over the latter. The court on page 169 stated, "Congress hardly intended the intrusion of another authority during the very preparation of a commodity subject to the surveillance and comprehensive specifications of the Department of Agriculture," and that to so construe the federal Act "would not only hamper the administration of the federal act but would be inconsistent with its requirements."

A detailed discussion of the numerous violations charged in the Rice complaint would unduly prolong this opinion. We shall merely attempt to state the various matters complained of and show that the Secretary in the main has explicit authority with reference thereto. In this connection it is pertinent to observe that the Secretary (7 U. S. C. A. § 268) is authorized to promulgate all rules and regulations regarded by him as necessary for the efficient execution of the Act. In conformity with this provision, the Secretary has promulgated voluminous regulations designed no doubt to cover every feature of the management, control and operation of federally licensed warehouses, the storage of grain therein and the issuance of warehouse receipts. No point is made by defendants but that these regulations are within the authority conferred by Congress upon the Secretary.

[fol. 119] Perhaps the most important, at least the most controverted, charge is that the plaintiffs' warehousemen "have unlawfully maintained and do now maintain unjust, unreasonable and excessive rates and charges for services rendered, contrary to Sec. 32 of the Public Utility Act of Illinois." § 25 of the Warehouse Act provides that the Secretary may, after hearing, revoke a warehouseman's license "upon the ground that unreasonable or exorbitant charges have been made for services rendered." § 23 requires that reports be made to the Secretary concerning the "conditions, contents, operation and business" of the warehouse in such form and at such times as the Secretary may require. The rules and regulations promulgated by the Secretary under the Act require not only the filing of a schedule of charges but also the filing of a statement of any proposed change, together with the reason therefor, and it is required that such charges be conspicuously posted in the principal office of the warehousemen.

Defendants contend that there is no conflict between the two authorities because the authority to initiate or fix rates is solely a matter for the state and the Secretary has only the power to determine when rates are unreasonable or exorbitant, in other words, what might be termed a veto power. We think the contention is not tenable. It must be remembered that one of the conditions upon which the Secretary is authorized to issue a license is the showing by the applicant therefor that the charge which the latter proposes to make is not unreasonable or exorbitant. This is a

matter solely for the determination of the Secretary. Assuming that the state authority has the right to fix such rate, it would of course have the right to determine a rate higher than that determined by the Secretary to be not unreasonable or exorbitant. In such a situation the warehouseman would be subjected to the penalty provided for a failure to comply with the state rate, and at the same time in order to procure or retain a federal license he would be compelled to violate such rate. Certainly a warehouseman could neither fix nor raise his charge without the approval of two separate and distinct authorities. We suppose that the essential function of a rate making body is to determine rates which will be fair both to the utility and to the public, and it appears plain that the Secretary is vested with the authority to accomplish such purpose.

It was charged in the Rice complaint that plaintiffs or [fol. 120] some of them violated Article XIII of the Illinois Constitution by dealing in grain owned and stored by them in their own warehouses. This provision of the Illinois Constitution was sustained in *Hannah* v. *People*, 198 Ill. 77. Affidavits filed in support of plaintiffs' bill disclose that several million bushels of grain were stored in plaintiffs' warehouses which were owned by them and for which receipts had been issued under federal authority. § 18 of the Act (Par. 260 U. S. C. A.) provides for the contents of receipts, and Par. (i) states, "If the receipt be issued for agricultural products of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership" shall be shown. It is argued that this provision does not authorize a federally licensed warehouseman to store his own grain. We think it does. The fact that the Secretary has permitted such storage indicates that he has so construed the Act. To sustain defendants' contention on this point would immediately invalidate receipts of the value of millions of dollars. It would seriously impair one of the main purposes of the Act, that is, the integrity of warehouse receipts.

Plaintiffs were charged with discrimination against Rice, public grain producers, owners, shippers, dealers, etc., and with granting preferences and advantages to the federal government and agencies thereof, contrary to a provision of the Utility Act of Illinois. The manner of the alleged discrimination is not stated except it is asserted that the

federal government and its agencies are charged a lower rate than that charged Rice.

§ 13 of the Act (Par. 254 U. S. C. A.) prohibits the discrimination by warehousemen and provides for storage "without making any discrimination between persons desiring to avail themselves of warehouse facilities." It would appear that this provision gives the Secretary authority to prevent discriminations either in favor of or against any person employing warehouse facilities. Although it appears that plaintiffs have favored the federal government and its agencies in the storage of grain, it is shown that the Secretary had knowledge thereof and acquiesced therein.

It was charged that some of plaintiffs received undue preferences and discriminated by mixing high quality grain with their own inferior grain, sacrificing part of storage charges to effect purchases and sale of grain, and rebating [fol. 121] storage charges, retaining desirable transit tonnage for their own use, storing their own grain in warehouses with more reasonable insurance rates and unduly delaying loading of grain, all in violation of provisions of the Utility and Grain Warehouse Acts of Illinois. These are all matters, in our judgment, completely within the sphere of the federal regulatory power. As already noted, the federal Act permits a warehouseman to store his own grain, and the Secretary is authorized to prevent discrimination. In addition, § 15 requires inspection and grading of fungible agricultural products stored in the federally licensed warehouses; § 16 prohibits the mixing of fungible agricultural products of different grades; § 30 provides for fine and imprisonment for the fraudulent grading of agricultural products stored under the Act, and § 21 requires that stored products be delivered upon proper demand without unnecessary delay.

Plaintiffs or some of them were charged with maintaining unsafe, inadequate and inefficient warehouses, resulting in exorbitant and prohibitive insurance rates and in rendering inefficient service resulting in a deterioration of the grain stored in such warehouses. § 3 of the Act authorizes the Secretary of Agriculture: (1) "* * * to determine whether warehouses for which licenses are applied for or have been issued under this Act are suitable for the proper storage of any agricultural product or products," and (2) "* * * to prescribe * * * the duties of the warehouse-

men conducting warehouses licensed under this Act with respect to their care and responsibility for agricultural products stored therein." § 23 requires a warehouseman to make reports to the Secretary concerning the condition, contents, operation and business of a warehouse in such form and at such times as the Secretary may require. § 24 authorizes the Secretary to examine agricultural products stored in licensed warehouses and publish his findings. It appears that the affirmative authority thus conferred upon the Secretary by §§ 3, 23 and 24 is such as to give him control over the warehouses and the grain stored therein in the manners complained of in this paragraph.

Plaintiffs were charged with rendering services without filing and publishing rates, rules and regulations as required by the state. Under regulation 5, § 3 of the Regulations, a federal licensee is required to file with the Secretary a schedule of charges to be made as well as a copy of the [fol. 122] rules under which he operates. The regulation further provides that a copy of such rules and schedule of charges must be posted in the principal office of a warehouseman.

Another charge against plaintiffs was that they or some of them abandoned and discontinued service without the approval of the Commission. § 5 of the Act provides for the termination of a federal license for failure to comply with the terms of the Act. As already shown, § 3 authorizes the Secretary to determine the suitability of a federal warehouse for the storage of agricultural products. It thus appears that the Secretary is authorized to determine when a warehouse should be abandoned, and that such determination is enforceable by revocation of the license. The mere issuance of a federal license carries with it the representation of a determination by the Secretary that the warehouse is suitable for the storage of grain. Suppose the Commission should find that the same warehouse should be abandoned. We think this would present a direct conflict between the Secretary and the Commission. Suppose on the other hand that the warehouseman holding a federal license desires to abandon the service. Being under bond exclusively to the federal agent, he could only do so by satisfying the bond and surrendering his license. When that was accomplished, control would revert to the state and the Commission.

The complaint further charged the plaintiffs with charging unjust, unreasonable and discriminatory rates, operating without a state license and mixing public grain with grain of different grades. We have already referred to the authority of the Secretary concerning these matters and we need not discuss them further. It is sufficient to state that we are of the view that the Secretary has express authority over such matters and that any authority exercised by the state would be directly in conflict therewith.

Finally, plaintiffs were charged with having violated the Illinois Statute by failing to secure approval of the Commission of contracts with affiliates, with other public utilities and by failing to obtain authority to issue securities. While we find nothing in the Act which expressly relates to such matters, we think, for the reasons already stated, that the Secretary has implied authority to deal therewith.

In our view, all of the matters charged in the Rice complaint, on which the Commission has assumed jurisdiction and is about to act, concern directly or indirectly the opera- [fol. 123] tion of federally licensed warehouses and the storage of grain therein for which receipts are issued. The allowance of such relief by the Commission on the charges thus made would conflict with the Warehouse Act or "plainly and palpably infringes its policy." The exercise of such authority by the Commission would thwart the primary purpose which Congress sought to accomplish. Thus viewing the situation it follows that the order appealed from must be, and is hereby, reversed, with directions to overrule the defendants' motion to strike the complaint and to proceed in accordance with the views herein expressed.

This brings us to a consideration of the appeal in No. 8897, which we think may be disposed of in rather short order. This is so, as we view the situation, because our conclusion in No. 8898 is largely and perhaps completely determinative of that which must be reached on this appeal.

The Board of Trade relies upon the Commodity Exchange Act (§§ 1-17 (a), Title 7 U. S. C. A.) as conferring upon the Secretary of Agriculture exclusive jurisdiction of all regulatory authority over it and similar instrumentalities. The provisions of the Act as well as the rules and regulations promulgated under the authority contained therein are lengthy and we think it is not necessary to set them forth or discuss them in detail. It is sufficient to state that we

have given them careful consideration and think that Congress intended and expressly provided for, exclusive federal control and authority over the agencies to which the Act is applicable, including the Board of Trade.

As shown in our discussion of appeal No. 8898, the Commodity Exchange Act is closely related to the United States Warehouse Act; in fact, in some instances the provisions of the two Act are overlapping. The gist of the Rice charge of which the Commission has assumed jurisdiction is:

> "The Chicago Board of Trade has from time to time during the last ten years adopted new rules and regulations, and amended existing rules and regulations, relating to the warehousing of grain in public warehouses and the custody of grain in private warehouses, without securing the approval of the Illinois Commerce Commission before placing said new or amended rules and regulations in effect. Such action constitutes a violation of Section 194b of the Illinois Grain Warehouse Act."

[fol. 124] The relief prayed for before the Commission was:

> "Declare inoperative and void such rules and regulations of the Chicago Board of Trade, or amendments thereto, which have not received prior approval of the Illinois Commerce Commission, and further require said Chicago Board of Trade to adopt and submit for approval, rules and regulations which are fair, equitable, adequate and specific."

Not only was the charge predicated upon § 194 (b) of the Illinois Grain Warehouse Act (Ill. Rev. Stats., 1941, Chap. 114, § 194 (b)), but it is conceded that this is the sole provision which confers or purports to confer any authority in the Commission over the Board of Trade.

§ 194 (b) provides:

> "No rule or regulation of any board of trade or grain exchange which relates to the warehousing of grain in any public grain warehouse, or which relates to the custody of grain in any private warehouse, or to the use or negotiation of custodian's receipts for such grain, shall be or become operative until such rule or regulation is approved by the Illinois Commerce Com-

mission, and the Illinois Commerce Commission may adopt and promulgate reasonable rules and regulations consistent with the provisions of this Act for the purpose of making this Act effective."

As we read this provision, the authority of the Commission is limited to (1) warehousing of grain in any public warehouse, (2) the custody of grain in any private warehouse, and (3) the use or negotiation of custodian's receipts for such grain. In short, it has to do only with the warehousing of grain and the use of warehouse receipts.

As we have shown in appeal No. 8898, the Secretary of Agriculture has exclusive authority over warehouse receipts, including the terms or contents thereof, as well as the storage of grain against which such receipts are issued and the warehouse in which such grain is stored. Again we call attention to § 5 (a) (7 U. S. C. A. Par. 7 (a) (7)) of the Commodity Exchange Act which provides that receipts issued under the United States Warehouse Act "shall be accepted in satisfaction of any futures contract, made on or subject to the rules of such contract market, without discrimination and notwithstanding that the warehouseman issuing such receipts is not also licensed as a warehouseman [fol. 125] under the laws of any state or enjoys other or different privileges than under state law." This provision, as we understand, makes it mandatory that the Board of Trade accept receipts issued under the authority of the United States Warehouse Act, even though the warehouseman is not licensed by the state.

It is plain, so we think, that any rule or regulation promulgated by the Board of Trade relative to its transactions in warehouse receipts must conform to and be consistent with the requirements of the federal authority in connection therewith. Any rule or regulation in conflict with or in excess of such authority would be invalid, and this would be so whether or not it was approved by the Illinois Commission. It is equally plain that any rule or regulation promulgated by the Commission concerning the same subject matter, which conflicted with or exceeded the power vested in the federal authority, would be of no effect. We therefore are of the view that Congress has invaded the precise field occupied by the Illinois Commission by reason of § 194 (b) the Illinois Grain Warehouse Act and has rendered its authority inoperative.

It follows that the order appealed from must also be reversed as to the Board of Trade. It is so ordered, with directions to overrule the defendants' motion to strike the complaint and to proceed in accordance with the views herein expressed.

[File endorsement omitted.]

[fol. 126] IN UNITED STATES CIRCUIT COURT OF APPEALS—SEVENTH CIRCUIT

8898

Before Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge; Hon. Charles G. Briggle, District Judge

GREAT LAKES ELEVATOR CORPORATION, et al., Plaintiffs-Appellants,

vs.

ILLINOIS COMMERCE COMMISSION, et al., Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

JUDGMENT—June 7, 1946.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and the same is hereby, remanded to the said District Court with directions to overrule the defendant's motion to strike the complaint and to proceed in accordance with the views expressed in the opinion of this Court filed this day.

[fol. 127] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DESIGNATION OF RECORD—Filed June 14, 1946

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

The following items constitute a complete record of all of the proceedings had and all of the evidence in the above entitled cause in the United States Circuit Court of Appeals for the Seventh Circuit and the undersigned requests you to make a transcript of the items designated to be filed as the record on appeal in the United States Supreme Court pursuant to the rules in such cases made and provided:

1. The entire printed record in the United States Circuit Court of Appeals for the Seventh Circuit.
2. Hearing May 8, 1946.
3. Opinion June 7, 1946.

[fol. 128] 4. Judgment June 7, 1946.

4a. Order staying mandate.

5. Designation.

Dated June 14, 1946.

George F. Barrett, Attorney General of the State of Illinois, Attorney for Illinois Commerce Commission and its Chairman, John B. Biggs, and William Parillo, Frank Peska, Edwin A. Rosenstone, Val J. Washington, Members of said Commission, Defendants-Appellees.

UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
County of Cook, ss:

William C. Wines, being first duly sworn upon his oath, deposes and says that he is an Assistant Attorney General in the office of George F. Barrett, Attorney General of the State of Illinois; that he has served a copy of the aforesaid

designation upon all of the attorneys of record in the above entitled cause on June 14, 1946.

William C. Wines.

Subscribed and sworn to before me this 14th day of June, A. D. 1946. Elizabeth P. Henderson, Notary Public. (Seal)

PROOF OF SERVICE

Received a copy of Designation of Record in the above entitled cause this 14th day of June, A. D. 1946.

Mayer, Meyer, Austrian & Platt, Ferre C. Watkins, Rooks & Freeman, Floyd E. Thompson, Frederick Mayer.

[File endorsement omitted.]

[fol. 129] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DESIGNATION OF RECORD—Filed June 17, 1946

To: Honorable Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, 1212 Lake Shore Drive, Chicago, Illinois.

On June 14, 1946, the Attorney General of the State of Illinois, on behalf of the Illinois Commerce Commission and its respective members, and George F. Barrett, Attorney General of the State of Illinois, defendants-appellees, filed with this court a designation of record.

Defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners, hereby respectfully join in, and adopt as to content, said designation of record of the Attorney General.

Daniel F. Rice & Company, a Partnership, and Its Individual Partners By Irvin Rooks, Lee A. Freeman, *Their Attorneys.*

[fol. 130] UNITED STATES OF AMERICA,
STATE OF ILLINOIS,
County of Cook, ss:

Lee A. Freeman, being first duly sworn, on oath deposes and says that he is one of the attorneys for defendants-appellees Daniel F. Rice & Company, a partnership, and its individual partners; that he has served a copy of the aforesaid designation upon all of the attorneys of record in this cause on June 17, 1946.

Lee A. Freeman.

Subscribed and sworn to before me this 17th day of June, 1946. M. E. Lalod, *Notary Public.*

[File endorsement omitted.]

[fols. 131-132] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATES—June 18, 1946

On motions of counsel for defendants-Appellees, Illinois Commerce Commission, *et al.*, and Daniel F. Rice &. Company, it is ordered that the issuance of the mandates of this Court in these causes be, and the same are hereby, stayed for a period of sixty (60) days.

[fol. 133] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 134] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 470

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 135] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 472

ORDER ALLOWING CERTIORARI—Filed October 21, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.